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Proposal for a

COUNCIL IMPLEMENTING REGULATION

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 Council Regulation (EC) No 1225/2009

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation'), in the expiry review proceeding concerning the anti-dumping duty in force in respect of imports of persulphates originating in the People's Republic of China ('the PRC').

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

By Regulation (EC) No 1184/2007¹ the Council imposed a definitive anti-dumping duty on imports of persulphates originating in the PRC. The measures took the form of an ad valorem duty at the level of 71.8%. Individual anti-dumping duty rates were granted to two Chinese exporters (0% and 24.5% respectively).

Consistency with other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

LEGAL ELEMENTS OF THE PROPOSAL

¹ OJ L 265, 11.10.2007, p. 1

Summary of the proposed action

On 10 October 2012, the Commission announced by a notice published in the *Official Journal of the European Union*², the initiation of an expiry review of the anti-dumping measures applicable to imports of persulphates originating in the PRC.

The review was initiated following a substantiated request lodged by two European producers (RheinPerChemie GmbH&Co. KG and United Initiators GmbH&Co. KG) representing 100% of the total Union production of persulphates.

The review investigation found likelihood of recurrence of dumping and injury should anti-dumping measures be lifted. It was further established that the maintenance of measures was not against the interest of the Union.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation, which should be published in the *Official Journal of the European Union* by 9 January 2014 at the latest, in order to prolong the existing measures.

Legal basis

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

The basic Regulation does not provide for alternative options.

BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

² OJ C 305, 10.10.2012, p. 15

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community³ ('the basic Regulation'), and in particular Article 9(4) and 11(2), (5) and (6) thereof,

Having regard to the proposal from the European Commission ('Commission') after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) Regulation (EC) No 1184/2007⁴ imposed a definitive anti-dumping duty on imports of persulphates originating in the People's Republic of China ('the PRC'), Taiwan and the United States of America ("the original investigation" and "the original measures"). The measures with regard to the PRC took the form of an *ad valorem* duty of 71,8% for all companies except two Chinese exporting producers to whom individual duties were granted.

2. Initiation of an expiry review

(2) On 10 October 2012, the Commission announced by a notice ('Notice of initiation')⁵, published in the *Official Journal of the European Union*, the initiation of an expiry review of the anti-dumping measures applicable to imports of persulphates originating in the PRC.

(3) The review was initiated following a substantiated request lodged by two European producers, RheinPerChemie GmbH&Co. KG and United Initiators GmbH&Co. KG ('the applicants'), representing 100% of the total Union production of persulphates.

(4) The request was based on the grounds that the expiry of the measures would be likely to result in a recurrence of dumping and injury to the Union industry.

3. Investigation

3.1. Review investigation period and period considered

³ OJ L 343, 22.12.2009, p. 51.

⁴ OJ L 265, 11.10.2007, p. 1.

⁵ OJ C 305, 10.10.2012, p. 15.

(5) The investigation of a continuation or recurrence of dumping covered the period from 1 October 2011 to 30 September 2012 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2009 to the end of the RIP ('the period considered').

3.2. Parties concerned by the investigation

(6) The Commission officially advised the applicants, exporting producers in the PRC, unrelated importers and users known to be concerned, producers in the potential analogue countries and the representatives of the PRC of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.

(7) In view of the potentially large number of exporting producers in the PRC and unrelated importers in the Union involved in the investigation, sampling was envisaged in the Notice of Initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were invited, under Article 17 of the basic Regulation, to make themselves known within 15 days of the publication of the notice of initiation and to provide the Commission with the information requested in the Notice of initiation.

(8) None of the importers made itself known.

(9) Only one exporting producer from the PRC replied to the questionnaire. Therefore, it was not necessary to select a sample of exporting producers.

(10) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from two Union producers, one exporting producer in the PRC and one producer in Turkey, considered as a potential analogue country.

(11) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of a continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*

- RheinPerChemie GmbH & Co. KG, Germany
- United Initiators GmbH & Co. KG, Germany

(b) *Exporting producer in the PRC*

United Initiators (Shanghai) Co. Ltd., Shanghai⁶

B. PRODUCT CONCERNED AND LIKE PRODUCT

(12) The product concerned is the same as that covered by the original investigation , namely peroxosulphates (persulphates), including potassium peroxymonosulphate

⁶ It is recalled that under Regulation (EC) No 1184/2007 (OJ, 11.10.2007, L 265/1) which imposed a definitive anti-dumping duty on imports of peroxosulphates originating in the People's Republic of China, Taiwan and the United States, the name of the company United Initiators Shanghai Co., Ltd. was Degussa-AJ (Shanghai) Initiators Co., Ltd., Shanghai. The change of name was due to the change of ownership in 2008.

sulphate ('product concerned'), currently falling within CN codes 2833 40 00 and ex 2842 90 80.

- (13) The product concerned is used as an initiator or as an oxidising agent in a number of applications. Some examples include its use as polymerisation initiator in the production of polymers, as an etching agent in the production of printed circuit boards, in hair cosmetics, in textile desizing, in paper manufacturing as a denture cleanser and as a disinfectant.
- (14) The investigation confirmed that, as in the original investigation, the product concerned and that manufactured and sold on the domestic market of the PRC, as well as that produced and sold by the Union industry on the Union market have the same basic physical and technical characteristics and the same basic uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. General remarks

- (15) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and whether dumping was likely to continue or recur upon a possible expiry of the measures in force on certain imports from the PRC.
- (16) As explained in recital (9), only one Chinese exporting producer cooperated in the investigation and it did not export the product concerned to the Union during the RIP. As mentioned below in recital (22) and as explained in detail in recitals (51) to (53), the investigation showed that basically all imports from the PRC during the RIP were made by one exporter which was found not to be dumping in the original investigation, and which is not subject to the current review. Hence, no dumping analysis could be done in this case.

2. Development of imports in case the measures are repealed

- (17) In order to assess the likelihood of recurrence of dumping, the information provided by the cooperating Chinese exporting producer, the information collected in accordance with Article 18 of the basic Regulation and facts available with regard to the non-cooperating exporting producers were taken into account. The facts available were found in the request for the expiry review, in the information published in the framework of an expiry review initiated in March 2013 by the United States of America (USA)⁷, in the statistics available to the Commission i.e. the monthly data transmitted by Member States under Article 14 (6) of the basic Regulation ("the 14.6 database") and in the Eurostat import data.
 - (a) Prices and volume of imports into the Union from the PRC and other third countries
- (18) The data available in the investigation showed that basically all imports from the PRC during the RIP were made by one Chinese exporter which was not found to be dumping in the original investigation⁸. These imports are thus not subject to anti-dumping measures. The prices of these imports remained below the Union industry prices during that period.

⁷ No. A-570-847 (Review)

⁸ The company referred to in this Recital is not re-examined in the current expiry review investigation since the original investigation established zero duty for this company (Council Regulation No 1184/2007).

- (19) Despite the fact that Chinese import prices into the Union increased by 29% in the period considered, they were still low and were undercutting the price of the Union industry during the RIP. The sales prices of the Union industry in the Union market also increased but at a less pronounced rate of 7%.
- (20) The sole co-operating Chinese exporter which is subject to the current anti-dumping measures was not exporting the product concerned to the Union during the RIP. However, the investigation showed that it was exporting at dumped prices to third country markets and that its prices were even lower than those of the current imports from the PRC in the Union market. This is an indication that exporters in China are continuing to practice dumping and that their prices are low.
- (21) The Union market roughly consists of imports from three countries: China, Turkey and the USA, each representing between 8% and 10% of market share and two Union producers with a market share of around 65 to 75%. The investigation showed that the USA continued to be present on the Union market and represented around one third of total imports during the RIP. The US import prices were on average 10% above the import prices from the PRC. This finding, combined with the observed undercutting of the Union industry's prices, indicates that the Chinese imports continued to exercise a downward pressure on the sales prices in the Union.
- (22) As mentioned above in recital (18), Chinese imports during the RIP were made by one exporter which was found not to be dumping in the original investigation. Between 2009 and the RIP, the volume of these imports increased by 24% and the corresponding market share increased from 8% to 9,6% of total Union consumption in the same period.
- (23) It is noteworthy to recall that in the years 1995 to 2001 anti-dumping measures were imposed against persulphates from the PRC. As these measures were repealed, import volume from the PRC increased from less than 200 tonnes in 2001 to more than 4000 tons in 2003 and more than doubled to almost 9000 tons in 2006. In other words, Chinese imports took more than 20% of the Union market in few years. Over the period 2003-2006, whilst consumption increased by 7%, Chinese market share doubled. This shows that Chinese exporters are able to take considerable market share in the Union market in the absence of anti-dumping measures.
- (24) In view of the above facts and considerations, in particular the Chinese reaction to the repeal of the measures in the Union market in 2001, the level of Chinese prices during the RIP and the continued dumping practices in third country markets, it is considered that there is a likelihood that in the short term low-priced Chinese imports would resume in large quantities into the Union market should the current measures be repealed.

(b) Pricing behaviour of Chinese producers on other export markets

- (25) As mentioned in recital (16) above, the cooperating Chinese company did not export to the Union during the RIP, and it was not possible to compare its normal values on the domestic market with export prices to the Union. It was however assessed, as mentioned in recital (24) above, whether the company's exports to third countries were made at dumped prices during the RIP. Since the company was granted MET in the original investigation, normal values were established based on its own data.
- (26) For the three types of the product concerned for which domestic sales were representative and made in the ordinary course of trade, average normal values were established on the basis of the prices paid by independent customers in the domestic

market. For one type, normal value had to be constructed based on the cost of production, in accordance with Article 2(3) of the basic Regulation. The company's cost of manufacturing, selling, general and administrative costs (SG&A) and profit achieved on the domestic sales made in the ordinary course of trade in accordance with Article 2(6) of the basic Regulation were used to establish the normal value of that type.

- (27) The comparison between the normal weighted average value and the weighted average export price, on an ex-works basis to third countries established on the basis of the reported and verified data, showed a weighted average dumping margin of 9,4
- (28) With regard to pricing behaviour, the existence of the anti-dumping measures in India and in the USA is also a clear indication of dumping practices by Chinese exporting producers on other markets.

(c) Attractiveness of the Union market

- (29) The investigation showed that the cooperating Chinese company exported to a wide variety of third countries such as Brazil, Indonesia, Malaysia, South Africa, South Korea, Taiwan, Thailand and the United Arab Emirates. The exports prices of the cooperating Chinese company to third markets were thus compared to the level of Union industry sales prices and the import price for the PRC during the RIP in the Union market. This comparison showed that the cooperating Chinese exporter was significantly undercutting, up to 40%, the prices of the Union industry during the RIP.
- (30) This analysis shows on the one hand, that prices in the Union market are higher and thus very attractive, and, on the other, that prices offered by other Chinese exporter are lower than the current Chinese import price in the Union market.
- (31) It is also noteworthy that the normal values of the cooperating company during the RIP were generally lower than Union industry sales prices. This confirms the attractiveness of the Union market as it would clearly generate higher profits for Chinese producers. The low price level in China does not seem to be based on any other ground than the abundant capacity and offer of the product concerned
- (32) As mentioned above in recital (28), certain third country markets, such as the USA and India, have become less attractive for Chinese exporters due to the existence of anti-dumping measures. Additionally, in relative terms, the other third country markets were found to operate at lower price levels than in the Union market. With regard to other third country markets, not under measures, they are already supplied by companies that are present in those markets, thus any spare capacity in the PRC would likely be used for exports to the Union market.
- (33) Based on the above, it is expected that Chinese imports would resume in larger volumes and exercise more price pressure on the Union market should the current measures be lifted.

(d) Production capacity and excess capacity available for exports

- (34) In accordance with Article 18 of the basic Regulation, in the absence of other information available, the analysis of the spare capacity in the PRC was based on the facts available, namely the limited information provided by the cooperating Chinese exporting producer on the market situation in the PRC, by the Union industry and from publicly available information at the level of 5 main producers identified in the PRC and data collected at initiation stage. The information delivered by these sources was found to be consistent.

(35) Based on this information, it is assumed that more than 100 thousand tonnes of production capacity is available in the PRC, which represents around three times the volume of Union consumption during the RIP.

(36) Based on the capacity utilisation rate of the cooperating producer, it was concluded that there are potentially significant capacities available in the PRC which could be used to increase production and re-directed it to the Union market in case the anti-dumping measures would be allowed to lapse.

(e) *Conclusion on the likelihood of recurrence of dumping*

(37) In view of the above, it was considered that there is a likelihood that dumping would recur if the current measures were allowed to lapse. In particular the level of the normal values established in China, the dumping behaviour of the cooperating producer in third country markets, the existence of anti-dumping measures against Chinese exporters in India and the USA, the attractiveness of the Union market compared to other markets and the availability of significant production capacity in the PRC point to a likelihood of recurrence of dumping in case the current measures are repealed.

D. SITUATION ON THE UNION MARKET

1. Definition of the Union industry

(38) The current investigation confirmed that persulphates are manufactured only by two producers in the Union. They constitute 100% of total Union production during the RIP. Both producers supported the review request and cooperated with the investigation.

(39) These two companies thus constitute the Union industry within the meaning of Article 4(1) and 5(4) of the basic Regulation and will hereafter be referred to as the 'Union industry'.

2. Preliminary remark

(40) To protect confidentiality under Article 19 of the basic Regulation the data relating to the two Union producers is presented in indexed form or in ranges.

(41) Information on imports have been analysed at CN code level for the three main types of the like product, ammonium persulphate, sodium persulphate, potassium persulphate, on TARIC code level for the fourth type, potassium peroxydisulphate. The analysis of imports was supplemented by data collected under Article 14(6) of the basic Regulation.

3. Union Consumption

(42) Union consumption was established on the basis of the sales volume of the Union industry on the Union market, and import data from Eurostat, at CN code and TARIC code level.

(43) Union consumption in the RIP was slightly higher than at the beginning of the period considered. There was an increase of 22% noted between 2009 and 2010 but further on the consumption steadily decreased by around 18%.

Table 1
Consumption

	2009	2010	2011	RIP
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Consumption (tonnes)	25 000 – 35 000	35 000 – 45 000	35 000 – 45 000	25 000 – 35 000
<i>Index (2009=100)</i>	<i>100</i>	<i>122</i>	<i>114</i>	<i>103</i>

Source: Questionnaire replies, Eurostat, Article 14(6) database

4. Volume, Prices and market share of imports from the PRC

- (44) The volumes and market shares of imports from the PRC were analysed on the basis of Eurostat and the data collected in accordance with Article 14(6) of the basic Regulation.
- (45) Comparison of the above mentioned databases indicates that all imports from the PRC originate from the one company which was found not to be dumping in the original investigation. As a consequence the market share of the dumped imports from the PRC and its prices evolution cannot be analysed.
- (46) Furthermore, since the Chinese exporting producers under anti-dumping measures did not export the product concerned to the Union during the RIP, it was not possible to calculate price undercutting for the PRC.

5. Imports from other third countries

- (47) The volume of imports and prices and market share from other countries during the period considered is shown in the table below. They were established on the basis of statistical information provided at CN code and TARIC code level. Due to confidentiality as explained in recital (40) above the market share figures are disclosed in an indexed form.

Table 2
Imports from other third countries

	2009	2010	2011	RIP
Turkey				
Volume of imports (tonnes)	2,326	3,002	2,360	3,026
<i>Index (2009=100)</i>	100	129	101	130
Price EUR / tonne	1,137	1,010	1,130	1,158
<i>Index (2009=100)</i>	<i>100</i>	<i>89</i>	<i>99</i>	<i>102</i>
Market share <i>Index</i>	100	106	89	126
USA				
Volume of imports (tonnes)	3,662	3,951	4,156	2,556
<i>Index (2009=100)</i>	100	108	114	70
Price EUR / tonne	1,053	1,170	1,201	1,099

<i>Index (2009=100)</i>	100	111	114	104
Market share <i>Index</i>	100	88	100	68
Other third countries				
Volume of imports (tonnes)	1652	1605	1420	1105
<i>Index (2009=100)</i>	100	97	86	67
Price EUR / tonne	1443	1518	1605	1738
<i>Index (2009=100)</i>	100	105	111	120
Market share <i>Index</i>	100	80	76	65
Total third countries				
Volume of imports (tonnes)	7640	8558	7936	6687
<i>Index (2009=100)</i>	100	112	104	88
Price EUR / tonne	1,163	1,179	1,252	1,231
<i>Index (2009=100)</i>	100	101	108	106
Market share <i>Index</i>	100	92	91	85

Source: Eurostat and Taric

(48) Import volumes from other third countries into the Union market decreased by around 12% during the period considered, and the average price increased by 6% over the same period. The market share lost by other third countries was taken over partly by the Chinese imports and the Union industry. During the same period the Union industry increased its prices on average by 7% as stated in recital (64) below.

6. Economic situation of the Union industry

6.1. Preliminary remarks

(49) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.

6.2. Production, production capacity and capacity utilisation

(50) The Union industry's production increased significantly during the period considered. This increase was the most pronounced between 2009 and 2010 when production increased by 32 percentage points. It remained stable afterwards, decreasing slightly between 2011 and the RIP.

Table 3

Total Union production

	2009	2010	2011	RIP
Production (tonnes)	20 000 – 30 000	25 000 – 35 000	25 000 – 35 000	25 000 – 35 000
Index (2009=100)	100	132	135	125

Source: Questionnaire replies

- (51) Production capacity remained stable during the period considered. As production increased in the period 2009-2011, capacity utilisation showed an overall increase of 34%. This trend changed in the RIP because the decrease in production also resulted in a decrease in capacity utilization by 6 percentage points as shown below:

Table 4

Production capacity and capacity utilisation

	2009	2010	2011	RIP
Production capacity (tonnes)	35 000 – 45 000	35 000 – 45 000	35 000 – 45 000	35 000 – 45 000
Index (2009=100)	100	101	101	101
Capacity utilisation	60%	79%	81%	75%
Index (2009=100)	100	131	134	124

Source: Questionnaire replies

6.3. Stocks

- (52) Although the level of closing stocks of the Union industry increased substantially between 2009 and the RIP its level remains relatively low with regard to production level.

Table 5

Closing stock

	2009	2010	2011	RIP
Closing stock (tonnes)	500 – 1 500	1000 – 2000	2 000 – 3 000	1 500 – 2 500
Index (2009=100)	100	144	227	184

Source: Questionnaire replies

6.4. Sales volume

- (53) The sales volume of the Union industry on the Union market to unrelated customers followed the trend of consumption with a peak in 2010 and then a decreasing trend in the following years, until the end of the RIP. Over the period considered it increased by 6%.

Table 6

Sales to unrelated customers

	2009	2010	2011	RIP
Volume (tonnes)	15 000 – 25 000	20 000 – 30 000	20 000 – 30 000	15 000 – 25 000
Index (2009=100)	100	122	113	106

Source: Questionnaire replies

6.5. Market share

- (54) As sales volumes to the Union followed the trend of consumption, the Union industry market share remained relatively stable in the period considered.

Table 7

Union market share

	2009	2010	2011	RIP
Union industry market share	65% - 75%	65% - 75%	65% - 75%	65% - 75%
<i>Index (2009=100)</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>103</i>

Source: Questionnaire replies, Eurostat and Taric

6.6. Growth

(55) As explained above, the growth in consumption in the Union was limited to 3 percentage points during the period considered. The Union industry managed to slightly increase its sales volumes and market share during the same period.

6.7. Employment and productivity

(56) The level of employment of the Union industry remained stable between 2009 and the RIP. However, the productivity per employee, measured as output in tonne per employee, increased visibly in this period in line with production trend. Detailed data is shown below:

Table 8

Total Union employment and productivity

	2009	2010	2011	RIP
Index of employees	100	100	103	101
Index of productivity	100	132	131	124

Source: Questionnaire replies

6.8. Unit sales prices

(57) Unit sales prices of the Union industry to unrelated customers in the Union increased by 7% between 2009 and the RIP. This 7% increase in the average sales price of the Union industry can be explained by the change in the product mix they were selling during the period considered. This price, even taking into account the potential difference in the product mix, was significantly higher than the price charged by the cooperating Chinese producer for export to third countries.

Table 9

Unit price of Union sales

	2009	2010	2011	RIP
Unit price of Union sales (EUR/tonne)	1 100 – 1 300	1 100 – 1 300	1 200 – 1 400	1 200 – 1 400
<i>Index (2009=100)</i>	<i>100</i>	<i>100</i>	<i>105</i>	<i>107</i>

Source: Questionnaire replies

6.9. Profitability

(58) In 2009, profitability of the Union industry was close to breakeven. Subsequently, in the period 2010 - RIP, profitability remained above 10%. The sudden jump in the profitability index between 2009 and 2010 thus results from very low base level in 2009 which was a critical year for the Union industry. In 2011 the high profitability resulted from an extraordinary cost saving event, which will not repeat itself in the future. This is already reflected in the decreased profitability in the RIP, which continues to be the trend.

Table 10
Profitability

	2009	2010	2011	RIP
Profitability Union sales <i>Index (2009=100)</i>	100	2 400	3 336	1 854

Source: Questionnaire replies

6.10. Investment and return on investment

- (59) The investigation showed that the Union industry was able to keep high level of investments in all the period considered.
- (60) Return on investment followed closely the profitability trend in 2009 and 2011 being not representative as explained in recital (58) above.

Table 11
Investments and Return on Investment

<i>Index (2009=100)</i>	2009	2010	2011	RIP
<i>Investments</i>	100	71	110	99
<i>Return on investment</i>	100	3 166	4 647	2 455

Source: Questionnaire replies

6.11. Cash flow and ability to raise capital

- (61) The cash-flow, which affects the ability of the industry to self-finance its activities, expressed as a percentage of the turnover of the product concerned, followed a trend similar to that of profitability. It significantly improved up to 2011 and decreased during the RIP.

Table 12
Cash flow

	2009	2010	2011	RIP
Cash flow <i>Index (2009=100)</i>	100	288	381	172

Source: Questionnaire replies

6.12. Wages

- (62) Whilst the number of people employed by the Union industry remained stable, their wages increased by 12% during the period considered.

6.13. Magnitude of dumping margin

- (63) As explained above there were no dumped imports from the PRC during the period considered, therefore the magnitude of dumping margin could not be assessed.

6.14. Recovery from past dumping

- (64) Taking into account the absence of low-priced dumped imports from the PRC, the relatively high capacity utilisation and the gain in market share achieved by the Union industry, its level of profitability and the positive development of certain financial indicators, it is concluded that the Union industry recovered from the effects of past dumping during the period considered. The recovery is however recent and a certain decline in various injury indicators such as profitability, cash flow, return on investment and investment was observed in the Union market during the RIP.

7. Conclusion on the situation of the Union industry

- (65) The investigation showed that the imports of low-prices dumped products from the PRC ceased on the Union market right after the imposition of the original measures in 2007 and they were not present during the period considered or the RIP. The imports from the PRC present on the Union market originate from the sole Chinese producer found not to be dumping in the original investigation. This allowed the Union industry to achieve high level of production, increase its sales volume, average sales price, market share and profitability and to improve its overall financial situation.
- (66) It is therefore concluded that the Union industry did not suffer material injury during the RIP. Given the decline in consumption and the deterioration in certain injury indicators as described above during the RIP, the situation of the Union industry is still vulnerable.

E. LIKELIHOOD OF RECURRENCE OF INJURY

1. Preliminary remarks

- (67) To assess the likelihood of recurrence of injury if the measures were allowed to lapse, the potential impact of the Chinese imports on the Union market and the Union industry was analysed in accordance with Article 11(2) of the basic Regulation.
- (68) The analysis focused on the spare capacity in the PRC and the behaviour of the Chinese exporters in the third country markets and in the Union market.

2. spare capacity in the PRC

- (69) According to the information collected and verified during the investigation, it is estimated that around 100 thousand tonnes of production capacity for the product concerned is available in China. Furthermore, there are several small producers dispersed in the country which make this figure even higher.
- (70) Due to the lack of cooperation from Chinese exporters there is no data available indicating the precise percentage of this capacity which is spare and which could be used for exporting the product concerned to the Union market. However, the investigation showed that the sole Chinese cooperating producer has a spare capacity of around 30%. Extrapolating this information to all Chinese companies would mean that a spare capacity of more than 30 thousand tonnes currently exists in the PRC.
- (71) Based on the above, even if the Chinese companies would not work at their full capacity, 20-25 thousand tonnes of the product concerned would be available for export in the PRC. Given the findings made and the conclusions reached in recitals (22) to (44) above, it is clear that in case the measures would not be extended, the available spare capacity in China will be intended to be exported to the Union market. This potential additional export volume should be seen in the context of a Union consumption of around 25 000-35 000 tonnes in the RIP.

3. Export From the PRC

- (72) As mentioned in recital (20) above, the investigation showed that Chinese exports to third countries were made at dumped prices. Furthermore, the results of expiry reviews conducted by the relevant authorities in the USA and in India led to the recommendation that the anti-dumping measures in force on persulphates from the PRC should be extended. In this situation it is expected that free production capacity of the Chinese exporters will be mainly used to produce for export to the Union market if the measures are allowed to lapse. As explained in recital (32) above, given

that the supply to other third country markets, not under measures, is already ensured by companies that are present in those markets, any spare capacity available in the PRC would likely be used to export the product concerned to the Union market.

- (73) Taking into account past dumping practice of Chinese exporters that led to the imposition of the measures in force and their current dumping behaviour in third countries, it can be concluded that these volumes of exports to the Union would be made at dumped prices.
- (74) Moreover, as mentioned in recital (23) above, it is recalled that in the years 1995 to 2001 anti-dumping measures were imposed against export of persulphates from the PRC. As these measures were not extended, imports from the PRC increased from less than 200 tonnes in 2001 to almost 10 thousand tonnes in 2006, and thus took more than 20% of the Union market.

4. Conclusion

- (75) In view of the findings of the investigation, namely the spare capacity available in the PRC, the continuation of Chinese dumping to the third countries, the limited ability of the Chinese exporters to sell in other main third countries markets and their proven ability to redirect export volumes to the Union market, it is considered that the repeal of the measures would weaken the position of the Union industry in their core market and the injury suffered would recur due to likely Chinese imports at dumped prices. There are no reasons to believe that the improvement of the performance of the Union industry due to the measures in force would remain or strengthen if the measures were repealed. On the contrary, there are favourable conditions for a likely shift of the Chinese imports to the Union market at dumped prices and in considerable volumes and that would likely undermine the positive developments in the Union market reached over the period considered. The likely Chinese dumped imports would be able to exercise pressure on the Union industry's sales prices and make it lose market share and as a consequence would negatively impact the Union industry's financial performance which is still vulnerable as explained in recital (66) above.

F. UNION INTEREST

1. Introduction

- (76) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing measures would be against the Union interest as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers and of users. The interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (77) As this investigation is a review of the existing measures, it allowed for assessment of any undue negative impact of the existing anti-dumping measures on the interested parties.

2. Interest of the Union industry

- (78) It was concluded in recital (70) above that the Union industry would be likely to experience a serious deterioration of its situation in case the anti-dumping measures were allowed to lapse. Therefore, the continuation of measures would benefit the Union industry because the Union producers should be able to maintain its sales volumes, market share, profitability and its overall positive economic situation. By contrast, the discontinuation of the measures would seriously threaten the viability of

the Union industry because there are reasons to expect a shift of the Chinese imports to the Union market at dumped prices and in considerable volumes that would cause recurrence of injury.

3. Interest of users

(79) None of the 44 contacted users replied to the questionnaire or cooperated. Users did not cooperate in the original investigation either. In absence of interest from users, it was concluded that measures would not be against the users' interest to maintain them. In addition, the investigation revealed that the impact of the product concerned on the costs of downstream products is rather marginal and the maintenance of the measures would not adversely impact the user industry. The investigation also revealed that due to the nature of the product as well as the several sources of supplies available on the market users can easily switch suppliers.

4. Interest of importers

(80) None of the 14 contacted importers replied to the questionnaire or cooperated. Importers did not cooperate in the original investigation either. In absence of interest from importers, it was concluded that it would not be against their interest to maintain measures. The investigation revealed that importers can easily buy from different sources that are currently available on the market, in particular from the Union industry, US exporters and Chinese exporters selling at non-dumped prices.

5. Conclusion

(81) In view of the above, it is concluded that there are no compelling reasons of Union interest against the maintenance of the current anti-dumping measures.

G. ANTI-DUMPING MEASURES

(82) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

(83) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain peroxosulphates (persulphates) originating in the PRC, imposed by Council Regulation (EC) No 1184/2007 should be maintained.

(84) In order to minimise the risk of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to companies for which an individual duty rate is introduced, include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other producers.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, currently falling

within CN codes 2833 40 00 and ex 2842 90 80 (TARIC 2842 90 80 20) and originating in the People's Republic of the China.

2. The rate of the definitive anti-dumping duty applicable to the, net free-at-Union-frontier price, before duty, of the products described in paragraph 1, and manufactured by the companies listed below shall be as follows:

Company	Anti-Dumping Duty	TARIC Additional Code
ABC Chemicals (Shanghai) Co., Ltd., Shanghai	0,0 %	A820
United Initiators Shanghai Co., Ltd	24,5 %	A821
All other companies	71,8 %	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to “all other companies” shall apply.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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,

For the Council
The President