Commission Implementing Regulation (EU) No 569/2014 of 23 May 2014 amending 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 following a 'new exporter' review pursuant to Article 11(4) of Council Regulation (EC) No 1225/2009

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THE EUROPEAN COMMISSION,

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 Community[(1)] ('the basic Regulation'), and in particular Article 11(4) thereof,

Whereas:

A. **MEASURES IN FORCE**

(1) In October 2005, the Council imposed definitive anti-dumping measures on imports of trichloroisocyanuric acid ('TCCA'), originating in the People's Republic of China ('PRC') by Regulation (EC) No 1631/2005[(2)] ('the original Regulation'). The anti-dumping duty rates ranged from 7,3 % to 42,6 %.

(2) By Implementing Regulation (EU) No 855/2010[(3)], the Council amended the original Regulation by lowering the anti-dumping duty rate for one exporting producer to 3,2 %.

(3) Following an expiry review, pursuant to Article 11(2) of the basic Regulation, the Council imposed definitive anti-dumping measures consisting of individual duties ranging from 3,2 % to 40,5 % with a residual duty of 42,6 % on imports of TCCA originating in the PRC by Implementing Regulation (EU) No 1389/2011[(4)].

B. **CURRENT PROCEDURE**

1. **Request for a review**

(4) On 3 May 2013, the European Commission ('the Commission') received a request to initiate a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The request was lodged by Liaocheng City Zhonglian Industry Co. Ltd ('the applicant'), an exporting producer in PRC.

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(5) The applicant claimed that it did not export the TCCA to the Union during the original period of investigation, i.e. the period from 1 April 2003 to 31 March 2004 ('the original investigation period').

(6) Furthermore, the applicant claimed that it was not related to any of the exporting producers of TCCA which are subject to the abovementioned anti-dumping measures.

(7) The applicant further claimed that it had begun exporting TCCA to the Union after the end of the original investigation period.

2. Initiation of a new exporter review

(8) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Union industry concerned had been given the opportunity to comment, the Commission initiated by Regulation (EU) No 809/2013[(5)], a review of Implementing Regulation (EU) No 1389/2011 with regard to the applicant.

(9) Pursuant to Regulation (EU) No 809/2013, the anti-dumping duty imposed by Implementing Regulation (EU) No 1389/2011 was repealed with regard to imports of TCCA produced and sold for export to the Union by the applicant. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

3. Product concerned

(10) The product concerned by the current review is the same as that described in the original Regulation, 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 and originating in the People's Republic of China ('the product concerned' or 'TCCA').

(11) TCCA is a chemical product used as a broad spectrum organic chlorine disinfectant and bleacher, in particular used for disinfecting water in swimming pools. It is sold in the form of powder, granules, tablets or chips. All forms of TCCA and preparations thereof share the same basic characteristics (chemical composition) and properties (disinfectant), are all intended for similar use and are therefore considered as a single product.

4. Parties concerned

(12) The Commission officially advised the applicant, the Union industry as well as the representatives of the exporting country, of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(13) In order to obtain the information deemed necessary for this investigation, the Commission sent a market economy treatment (MET) claim form and a questionnaire

to the applicant and received replies within the deadlines set for that purpose. The Commission sought to verify all the information it deemed necessary for the determination of the new exporter status and the dumping margin. A verification visit was carried out at the premises of the applicant in the PRC.

5. **Investigation period**

(14) The investigation of dumping covered the period from 1 August 2012 until 31 July 2013 ('investigation period' or 'IP').

C. **RESULTS OF THE INVESTIGATION**

1. **'New exporter' qualification**

(15) The investigation confirmed that the applicant had not exported the product concerned during the original investigation period and that it had started to export it to the Union after that period.

(16) As concerns the other conditions for the recognition of a 'new exporter' status, the applicant was able to demonstrate that it did not have any links, direct or indirect, with any of the Chinese exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

(17) Accordingly, it is confirmed that the applicant should be considered a 'new exporter' in accordance with Article 11(4) of the basic Regulation and thus an individual margin should be determined for it.

2. **Dumping**

Market economy treatment (MET)

(18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economic conditions prevail in respect of the manufacture and sale of the like product.

(19) These criteria are set out in summarised form below:

— business decisions are made in response to market signals without significant State interference, and costs reflect market values,

— firms have one clear set of independently audited accounting records in line with international accounting standards (IAS) and applied for all purposes,

— no significant distortions are carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— exchange rate conversions are carried out at market rates.

(20) The investigation established that the applicant's accounting records were not in line with international accounting standards and that, therefore, the company's

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accounting practice does not fulfil the requirements of the second criterion. In particular, the applicant failed to report in its accounts the implementation of an incentive scheme for management staff in line with international accounting standards.

(21) As a consequence, the balance sheet did not faithfully represent the financial position of the company and the profit and loss account and cash flow statement were burdened by financial costs for which there was no justification.

(22) Based on these considerations, the applicant could not be granted MET.

(23) The applicant and other interested parties were given an opportunity to comment on the above findings.

(24) The applicant pointed out that the incentive scheme should be booked in 2013, that it has no connection with the balance sheet of 2012 and that in 2012 the nature of the scheme was not yet determined. According to the applicant, such determination would be made in accordance with recommendations to be made by the auditors at the moment of the auditing exercise of the financial accounts for 2013 and could take the form of remuneration, interest on loan or quasi-contribution.

(25) The scheme was contractually concluded upon between the company and the management in 2012. However, there was no indication of it in the audited accounts of 2012, not even in the notes to the financial accounts. No accounting entry, identifying the incentive scheme, was made during the financial year 2013 up to the time of the investigation (November 2013) either.

(26) This absence of reporting in the accounts is serious. Indeed, the total liabilities reported in the trial balance at the end of the IP, 31 July 2013, were significantly underreported since the total loan amount pledged by managers would have increased the figure of the liabilities by 14 %. Moreover, the profit and loss account of 2013 will contain financial costs for which there is no legal basis, since no incoming cash flow corresponding to the incentive scheme occurred and interests were nevertheless effectively paid in 2013. As a consequence, the 2013 financial costs will be 9 times higher than the costs reported for 2012. Therefore, the financial information contained in the accounts did not provide for a reliable and faithful representation of the financial position of the company.

(27) It should also be noted that the nature of the scheme and the accounting thereof cannot depend on auditing qualification and that the booking thereof should be correctly made in a timely manner and not retrospectively. Therefore, a failure to report with accuracy the financial position and flows related to the scheme, cannot be considered to be in line with international accounting standards.

(28) In reaction to the disclosure of the Commission's findings, the applicant reiterated its request for MET, without however bringing any new argument. The findings on the MET determination are therefore confirmed.

Normal value