Council Implementing Regulation (EU) No 1389/2011 of 19 December 2011 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 1389/2011

of 19 December 2011

imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

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 Community[(1)] (the basic Regulation), and in particular Article 11(2) thereof,

Having regard to the proposal submitted by the European Commission (Commission) after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 1631/2005[(2)] the Council imposed definitive anti-dumping measures consisting of individual duties ranging from 7,3 % to 40,5 % with a residual duty of 42,6 %[(3)] on imports of trichloroisocyanuric acid originating in the People's Republic of China (PRC).

(2) By Regulation (EC) No 855/2010[(4)] the Council lowered the individual duty applied to one company from 14,1 % to 3,2 %.

2. Request for a review

(3) Following the publication of a notice of impending expiry[(5)] of the definitive anti-dumping measures in force, on 6 July 2010 the Commission received a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the European Chemical Industry Council (CEFIC) on behalf of Union producers representing a major proportion, in this case more than 90 %, of the total Union production of trichloroisocyanuric acid (the applicants).

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

3. Initiation

(5) Having determined, after consulting the Advisory Committee, that there was sufficient evidence for the initiation of an expiry review, on 6 October 2010 the Commission announced the initiation of such a review, pursuant to Article 11(2) of the basic Regulation, in a notice published in the *Official Journal of the European Union*[6] (the Notice of initiation).

4. Investigation

4.1. *Investigation period*

(6) The review investigation period (RIP) lasted from 1 July 2009 to 30 June 2010. The likelihood of continuation or recurrence of injury aspects was analysed during the period from 1 January 2007 to the end of the RIP (period considered).

4.2. *Parties concerned by the investigation*

(7) The Commission officially advised the applicants, the other known Union producer, exporting producers, importers and users known to be concerned, as well as the representatives of the PRC, of the initiation of the expiry review.

(8) 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. All interested parties who requested a hearing and who showed that there were specific reasons why they should be heard, were granted a hearing.

(9) In view of the apparently large number of exporting producers in the PRC and unrelated importers in the Union, sampling was envisaged for these parties in the notice of initiation, in accordance with Article 17 of the basic Regulation.

(10) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to 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.

(11) None of the exporting producers in the PRC cooperated in the investigation.

(12) As regards importers, a few companies initially came forward but then withdrew their cooperation at a later stage.

(13) The Commission sent questionnaires to all the parties known to be concerned within the deadlines set in the Notice of initiation. Replies were received from the three known Union producers and from two users.

(14) The Commission sought and verified all the information it deemed necessary with a view to determining the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the two major Union producers:

— Fluidra (Inquide Sau), Passeig de Sanllehy, 25, 08213 Polinya (Barcelona), Spain,

— Ercros (Aragonesas), Avenida Diagonal 595, Barcelona, Spain.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(15) The product concerned by the current 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 PRC.

(16) 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.

(17) The present investigation has confirmed that the product concerned, as manufactured and sold by exporting producers to the Union, is similar in terms of its physical and chemical characteristics, as well as its uses, to the product produced and sold by the Union producers on the Union market and by the producer in the analogue country on both its domestic and export markets. Hence, they are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(18) In accordance with Article 11(2) of the basic Regulation, a review was held to determine whether the expiry of the existing measures was likely to lead to a continuation or recurrence of dumping.

(19) As explained above, none of the 30 known exporting producers contacted came forward during the sampling exercise or made themselves known in the course of the investigation.

(20) Since none of the exporting producers in the PRC cooperated, the findings on the likelihood of continuation or recurrence of dumping rely on facts available in accordance with Article 18 of the basic Regulation, namely Eurostat data, the review request and official PRC export statistics.

(21) Additionally, data submitted by the cooperating exporting producer in the analogue country, Japan, were used to determine the normal value.

2. Dumping of imports during the RIP

2.1. *Analogue country*

(22) Since the PRC is an economy in transition and since, pursuant to Article 2(7)(a) of the basic Regulation, normal value has to be determined on the basis of the price or constructed normal value obtained in an appropriate market economy third country (the analogue country), or on the basis of the price from the analogue country to other countries, including the European Union, or where those cannot be determined, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

(23) In its Notice of initiation the Commission announced that Japan had been used in the previous investigation as an appropriate market economy country for the purpose of establishing normal value in respect of the PRC and that it envisaged using Japan again for this purpose. In the course of the present review investigation, producers in other market economy countries such as the USA and Taiwan were also contacted, to seek their cooperation. However, cooperation was obtained only from one exporting producer in Japan.

(24) It was therefore considered that Japan was an appropriate analogue country. In this connection, no comments or objections on the appropriateness of this country were received from interested parties.

2.2. *Normal value*

(25) Pursuant to Article 2(7) of the basic Regulation, normal value was established on the basis of the information received from the cooperating exporting producer in the analogue country, i.e. on the basis of prices paid or payable on the domestic market in Japan for like products which were found to be sold in the ordinary course of trade.

(26) It was first established for the cooperating exporting producer in Japan whether its total domestic sales of the like product to independent customers were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for at least 5 % of the total export sales volume of the product concerned into the Union. Domestic sales of the cooperating exporting producer in Japan were found to be representative during the RIP.

(27) Subsequently, domestic sales were examined to determine whether they were made in the ordinary course of trade (OCOT), in accordance with Article 2(4) of the basic Regulation.

(28) Since all sales on the domestic market were considered to have been sold at a profit, normal value was based on the actual weighted average domestic price during the RIP.

2.3. *Export price*

(29) In the absence of any cooperation from exporting producers in the PRC, the export price was established on the basis of Eurostat data.

2.4. *Comparison*

(30) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between the normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affect prices and price comparability. For this purpose, due allowance in the form of adjustments was made for differences in transport and insurance costs.

2.5. *Dumping margin*

(31) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price. Based on the above methodology, the dumping margin established amounts to 75 %.

3. **Development of imports if measures were repealed**

3.1. *Preliminary remark*

(32) In addition to analysing the existence of dumping during the RIP, the likelihood of the continuation of dumping was also investigated.

(33) In this respect the following elements were analysed: the spare capacity available in the PRC, the attractiveness of the Union market for PRC exporting producers and their exports to third countries.

3.2. *Spare capacity of PRC exporting producers*

(34) In the absence of other information concerning production capacity, the analysis was carried out in accordance with Article 18 of the basic Regulation on the basis of the information contained in the review request.

(35) According to the review request, with rates below 40 % production capacity utilisation in the PRC remained low during the period considered. As a result of huge production capacity and low domestic demand, there appears to be more than 180 000 tonnes of spare capacity available in the PRC which could be exported. This compares to Union consumption of around 44 000 tonnes in the RIP.

3.3. *Attractiveness of the Union market*

(36) The attractiveness of the Union market is reflected in the fact that the imposition of anti-dumping duties did not stop the expansion of PRC exports to the Union. Although during the period 2007-2009 import volumes were at a lower level compared to the investigation period of the original investigation that led to the imposition of the measures, import volumes in the RIP were above that level, reaching 22 696 tonnes.