Council Regulation (EC) No 1631/2005 of 3 October 2005 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of trichloroisocyanuric acid originating in the People's Republic of China and the United States of America

COUNCIL REGULATION (EC) No 1631/2005

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imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of trichloroisocyanuric acid originating in the People's Republic of China and the United States of America

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. PROVISIONAL MEASURES

(1) On 7 April 2005, the Commission imposed, by Regulation (EC) No 538/2005[(2)] (the provisional Regulation), a provisional anti-dumping duty on the imports into the Community of trichloroisocyanuric acid (TCCA) originating in the People's Republic of China (PRC) and the United States of America (USA) (the countries concerned).

(2) It is recalled that the investigation of dumping concerning the PRC covered the period from 1 April 2003 to 31 March 2004 (IP-PRC) and that the investigation of dumping concerning the USA covered the period 1 July 2003 to 30 June 2004 (IP-USA).

(3) For both investigations, the examination of trends relevant for the assessment of injury covered the period from 1 January 2000 to the end of the respective investigation period (period considered).

2. SUBSEQUENT PROCEDURE

(4) Following the imposition of a provisional anti-dumping duty on imports of TCCA from the countries concerned, all parties received a disclosure of the facts and considerations on which the provisional Regulation was based. All parties were granted a period within which they could make representations in relation to these disclosures.

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(5) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(6) The Commission services further disclosed all the essential facts and considerations on the basis of which they intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(7) It is recalled that, in recital 19 of the provisional Regulation, the product concerned was defined as TCCA and preparations thereof originating in the countries concerned. TCCA is also referred to as ‘symclosene’ under its international non-proprietary name (INN). TCCA is normally declared within CN codes ex 2933 69 80 and ex 3808 40 20.

(8) Moreover, it is recalled that, as set out in recitals 22 and 23 of the provisional Regulation, it was found that the product concerned and TCCA produced by the Community industry and sold on the Community market as well as TCCA produced and sold on the domestic markets of the countries concerned and the analogue country were like products within the meaning of Article 1(4) of the basic Regulation, since no differences in the basic physical and chemical characteristics and uses of the existing different types of TCCA had been found.

(9) One processor reiterated its claim already made at the provisional stage that the scope of the investigation should have excluded blended TCCA. The processor alleged that the complaint had defined the product concerned as only unblended TCCA and that this product scope had been improperly enlarged by blended TCCA. However, it is recalled that the complaint does not make any reference to blended or unblended products. It is also recalled that a product concerned is defined according to its basic physical, chemical, technical characteristics and end uses and may encompass several or many types which all share the same basic characteristics. In this case, both blended and unblended tablets were found to meet these criteria. The product concerned in these proceedings, as indicated in the notices of initiation for both cases, is trichloroisocyanuric acid and preparations thereof, i.e. all types of the product concerned that share the same basic characteristics are covered by these proceedings. It can therefore not be said that blended tablets should be excluded from the product scope nor that the product scope was enlarged. On this basis, the claim was rejected and the conclusion drawn under recital 24 of the provisional Regulation is confirmed.

C. DUMPING

1. GENERAL METHODOLOGY

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1.1. NORMAL VALUE

(10) In the absence of any comments about the methodology used when calculating the normal value, the methodology used as set out in recitals 26 to 33 of the provisional Regulation is confirmed.

1.2. EXPORT PRICE

(11) In the absence of any comments about the general methodology used when calculating the export price, the methodology used as set out in recital 34 of the provisional Regulation is confirmed.

1.3. COMPARISON

(12) In the absence of any comments about the methodology used when comparing the normal value and the export price, the methodology used as set out in recital 35 of the provisional Regulation is confirmed.

1.4. DUMPING MARGIN FOR THE PRC

(13) In the provisional Regulation two cooperating producers in the PRC were neither granted market economy treatment (MET) nor individual treatment (IT) (see recitals 44 and 66). The dumping margins for these two exporting producers had provisionally been calculated as a weighted average of their respective individual dumping margins.

(14) These two companies received erroneously a separate dumping margin and an individual duty, contrary to Article 9(5) of the basic Regulation and the consistent practice of the institutions. Therefore, this should be corrected at the definitive stage and both companies should be subject to the country-wide duty.

(15) Therefore, for the definitive measures and given that those two companies were clearly still under significant State influence, their data had to be considered in the calculation of the country-wide dumping margin. Thus, given that the level of cooperation was low, the country-wide dumping margin was set as a weighted average of:

(i) the weighted average of the dumping margins found for these two exporting producers, in accordance with the methodology explained in recital 38 of the provisional Regulation; and

(ii) the dumping margins found for the representative type of the product concerned with the highest dumping margin, as derived from the two exporters concerned.

2. PEOPLE'S REPUBLIC OF CHINA (PRC)

2.1. MET

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(16) In the absence of any comments, the provisional findings concerning determination of MET as set out in recitals 40 to 63 of the provisional Regulation are confirmed.

2.2. IT

(17) In the absence of any comments, the provisional findings concerning determination of IT as set out in recitals 64 to 67 of the provisional Regulation are confirmed.

2.3. NORMAL VALUE

2.3.1. Determination of normal value for all exporting producers not granted MET

(a) Analogue country

(18) In the absence of any comments on the choice of analogue country, the selection as set out in recitals 68 to 74 of the provisional Regulation is confirmed.

(b) Determination of normal value

(19) In the absence of any comments on the normal value for exporting producers not granted MET, the findings as set out in recital 75 of the provisional Regulation are confirmed.

2.3.2. Determination of normal value for exporting producers granted MET

(20) Several exporters submitted that certain allowances claimed when calculating the normal value had not sufficiently been taken into account. The exporters argued that certain costs (i.e. transports costs and packaging) had been included in the constructed normal value which should rather have been deducted as an allowance, in the same way as it was done in cases where normal value was based on the domestic price.

(21) These exporters also claimed that, for those types of the product concerned where a constructed normal value had to be used, selling, general and administrative expenses (SG & A) should be those expenses incurred on the domestic market.

(22) Finally, they claimed that the applicable profit margin should be the margin obtained on domestic sales in the ordinary course of trade.

(23) Following analysis of the claims, it was considered appropriate to adjust the normal value for the allowances claimed to the extent that these claims indeed concerned transport and packaging costs that had been included in the constructed normal value as provisionally established. Furthermore, the normal value has now been calculated taking into account the SG & A incurred on the domestic market, and the profit margin applied has been adjusted to reflect the profit margin obtained in the ordinary course of trade on the domestic market. The normal value has therefore been adjusted downwards to reflect these changes.

2.4. EXPORT PRICES

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(24) In the absence of any comments, the provisional findings concerning export prices as set out in recitals 79 and 80 of the provisional Regulation are confirmed.

2.5. COMPARISON

(25) In the absence of any comments, the provisional findings concerning comparison between the normal value and the export price as set out in recital 81 of the provisional Regulation are confirmed.

2.6. DUMPING MARGIN

2.6.1. For the cooperating exporting producers granted MET/IT

(26) In the absence of any other comments, except for the normal value adjustments, as set out in detail in recitals 20 to 23, the methodology set out in recitals 82 and 83 of the provisional Regulation is confirmed. The new dumping margins expressed as a percentage on the CIF import price at the Community border, are now as follows:

Hebei Jiheng Chemical Co. Limited	8,1 %
Puyang Cleanway Chemicals Limited	7,3 %
Heze Huayi Chemical Co. Limited	14,1 %
Zhucheng Taisheng Chemical Co. Limited	40,5 %

2.6.2. For all other exporting producers

(27) The new country-wide dumping margin, expressed as a percentage on the CIF import price at the Community border, and amended as explained in recitals 13 to 15, is now as follows:

All other companies	42,6 %

3. THE UNITED STATES OF AMERICA

3.1. NORMAL VALUE

(28) In the absence of any comments on the determination of normal value, with the exception of an issue of comparison having an influence on the level of the normal value for one exporting producer and commented below, the provisional findings concerning the method of establishing normal value as set out in recital 92 of the provisional Regulation are confirmed.

3.2. EXPORT PRICE

(29) One exporting producer contested the fact that the SG & A expenses and the profit realised by its related importers in the Community were deducted in their entirety