Commission Regulation (EC) No 538/2005 of 7 April 2005 imposing a provisional anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China and the United States of America

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Communities[(1)] (the basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 10 July 2004, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Union*[(2)], the initiation of an anti-dumping proceeding concerning imports of trichloroisocyanuric acid (TCCA) originating in the People's Republic of China (PRC).

(2) The anti-dumping proceeding was initiated following a complaint lodged on 1 June 2004 by the European Chemical Industry Council (CEFIC) (the complainant) on behalf of producers representing a major proportion, in this case more than 50 % of the total Community production of TCCA.

(3) Following the publication of the above-mentioned notice of initiation, questionnaires were sent to interested parties (see recital 12 below). The complainant subsequently pointed out that the questionnaires did not cover the full product concerned as defined in the notice of initiation. In order to clarify the matter, the Commission sent new questionnaires to interested parties and published a notice in the *Official Journal of the European Union*[(3)] in which the product scope of the investigation was clarified.

(4) On 13 October 2004, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Union*[(4)], the initiation of an anti-dumping proceeding with regard to imports into the Community of TCCA originating in the United States of America (USA).

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 538/2005. (See end of Document for details)*

(5) The anti-dumping proceeding was initiated following a complaint lodged on 30 August 2004 by the complainant on behalf of producers representing more than 50 % of the total Community production of TCCA.

2. Parties concerned by the proceeding

(6) The Commission officially advised the complainant, other Community producers, the exporting producers in the PRC and the USA, importers and users known to be concerned and representatives of the PRC and USA governments, of the opening of the proceedings. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notices of initiation.

(7) The complainant, other Community producers, exporting producers, importers and users made their views known. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(8) In view of the apparent large number of exporting producers identified in the PRC, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17 of the basic Regulation.

(9) In order to enable the Commission to decide whether sampling of exporters in the PRC would be necessary, and, if so, to select a sample, all exporting producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 April 2003 to 31 March 2004.

(10) After examination of the information submitted by the exporting producers, due to the low number of replies received to the sampling questions, it was decided that sampling was not necessary with regard to the exporting producers in the PRC.

(11) Moreover, in order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT) if they so wished, the Commission sent market economy treatment and individual treatment claim forms to the Chinese companies known to be concerned. Six companies requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they did not meet the conditions for MET.

(12) The Commission sent questionnaires to all parties known to be concerned, and to all other companies that made themselves known within the deadline set out in the notices of initiation. Complete questionnaire replies were received from one Community producer, 1 importer, 10 processors, 6 exporting producers in the PRC and 1 producer in the analogue country (Japan) and 1 exporting producers in the USA and its related importer in the Community. Incomplete questionnaire replies or submissions were received from 4 importers and 4 processors. In addition, the two other Community producers provided general information. In addition, one other processor provided a submission.

(13) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verification visits at the premises of the following companies:

(a) *Community producers*

— Aragonesas Delsa, Spain

— Neokem group, Spain.

(b) *Exporting producers in the PRC*

— Hebei Jiheng Chemical Co. Limited, Hebei Province

— Nanning Chemical Industry Co. Limited, Guangxi Province

— Changzhou Clean Chemical Co. Limited, Jiangsu Province

— Zhucheng Taisheng Chemical Co. Limited, Shangdong Province

— Puyang Cleanway Chemicals Limited, Henan Province

— Heze Huayi Chemical Co. Limited, Shangdong Province.

(c) *Exporting producers in the USA*

— Biolab Inc.

— Clearon Inc.

(d) *Related importers*

— Bayrol Deutschland GmbH, Germany.

(e) *Unrelated importers*

— Sojitz Europe plc, France.

(f) *Community users*

— Mareva Piscines & Filtrations SA, France

— Arch Water Products SAS, France.

(14) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification visit to establish normal value on the basis of data from an analogue country took place at the premises of the following company:

— Shikoku Chemicals Corporation, Marugame, Japan.

3. Investigation Periods

(15) The investigation of dumping concerning the PRC covered the period from 1 April 2003 to 31 March 2004 (‘Investigation period PRC’ or ‘IP-PRC’).

(16) The investigation of dumping concerning the USA covered the period 1 July 2003 to 30 June 2004 (‘Investigation Period USA’ or ‘IP-USA’).

(17) 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).

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(18) As there is a significant overlap in the IPs of the investigations, they are assessed together for reasons of administrative efficiency.

4. Product concerned and like product

Product concerned

(19) The product concerned by this proceeding is TCCA and preparations thereof originating in the PRC and the USA. TCCA is also referred to as 'symclosene' under its international non-propriatory name. TCCA is normally declared within CN codes ex 2933 69 80 and ex 3808 40 20.

(20) The complainant submitted that the original questionnaires sent by the Commission to interested parties in the PRC investigation did not cover the full product concerned as defined in the notice of initiation. The description of the product concerned in the original questionnaire stipulated that the product concerned should contain at least 88,5 % chloride. However, following discussions with the complainant, and in accordance with the wording of the notice of initiation, it was considered appropriate to clarify the product scope and provide interested parties in the investigation concerning PRC with new questionnaires with a product description which did not set a minimum limit to the chloride content.

(21) In order to ensure that the Commission obtained the full information it deemed necessary for its investigation, it sent new questionnaires to all the interested parties that had made themselves known following the publication of the notice of initiation in the *Official Journal of the European Union* (see recital 3 above).

Like Product

(22) No differences were found between the product concerned and the TCCA produced and sold on the domestic markets in the PRC, the analogue country (Japan) and the USA. Indeed, TCCA produced and sold in Japan has the same physical and chemical characteristics and uses compared with that exported from the PRC to the Community.

(23) Likewise, no differences were found between the product concerned and the TCCA produced and sold by the co-operating Community producers on the Community market. They both share the same physical and chemical characteristics and uses with TCCA exported from the PRC and the USA to the Community.

(24) Consequently, TCCA produced and sold on the domestic markets of the PRC, the USA and the analogue country (Japan) and TCCA produced and sold by Community producers on the Community market have the same basic physical and chemical characteristics and uses. Therefore, these products are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. DUMPING

1. General methodology

(25) The general methodology set out hereinafter has been applied to the co-operating exporting producer in the USA and to the exporting producers in the PRC for which MET was granted. The subsequent presentation of the findings on dumping for the countries concerned therefore only describes issues specific to each exporting country.

1.1. Normal value

(26) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(27) The Commission subsequently identified those types of TCCA, sold domestically by the companies having overall representative domestic sales, that were identical or directly comparable to the types sold for export to the Community.

(28) For each type sold by the exporting producers on their domestic markets and found to be directly comparable to the type of TCCA sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of TCCA were considered sufficiently representative when the total domestic sales volume of that type during the IP-PRC and IP-USA respectively represented 5 % or more of the total sales volume of the comparable TCCA type exported to the Community.

(29) An examination was also made as to whether the domestic sales of each type of TCCA sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the TCCA type in question. In cases where the sales volume of a TCCA type, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP's, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of a TCCA type represented less than 80 % of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(30) In cases where the volume of profitable sales of any type of TCCA represented less than 10 % of the total sales volume of that type, it was considered that this particular