

**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**

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<sup>(1)</sup> (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*<sup>(2)</sup>, 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*<sup>(3)</sup> 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*<sup>(4)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Community of TCCA originating in the United States of America (USA).
- (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.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>(2)</sup> OJ C 178, 10.7.2004, p. 2.

<sup>(3)</sup> OJ C 283, 20.11.2004, p. 3.

<sup>(4)</sup> OJ C 253, 13.10.2004, p. 6. Corrigendum OJ C 44, 19.2.2005, p. 30.

- (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*
    - Aragoesas 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).
- (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-proprietary 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 type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- (31) Wherever domestic prices of a particular type sold by an exporting producer could not be used, it was considered that constructed value of that particular type of TCCA formed an appropriate basis to establish normal value.
- (32) Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.
- (33) Actual domestic SG&A expenses were considered reliable when the total domestic sales volume of the company concerned could be regarded as representative when compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales of those types which were sold in the ordinary course of trade. For this purpose, the methodology set out in recital 29 was applied.

#### 1.2. *Export price*

- (34) In all cases where the product concerned was exported directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable. In other cases, Article 2(9) was applied.

#### 1.3. *Comparison*

- (35) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

#### 1.4. *Dumping margin*

- (36) According to Article 2(11) of the basic Regulation, for each exporting producer the weighted average normal value was compared with the weighted average export price.
- (37) For non-co-operating companies, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.
- (38) Since the export volumes of the co-operating exporters in the PRC represented around 70 % of the total imports from the PRC into the Community during the IP, and in order to ensure the effectiveness of any measures, it was decided to set the residual dumping margin at the level of the dumping margin established for those representative types of the product concerned with the highest dumping margins, deriving from the two co-operating exporters who were neither granted IT nor MET.
- (39) Since the export volumes of the co-operating exporters in the USA represented less than 40 % of the total imports from the United States of America into the Community during the IP, and in order to ensure the effectiveness of any measures, it was decided to set the residual dumping margin at the level of the dumping margin established for those representative types of the product concerned with the highest dumping margins, deriving from the two co-operating exporters.

## 2. People's Republic of China

### 2.1. Market Economy Treatment (MET)

- (40) 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 the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c).
- (41) Briefly, and for ease of reference only, these criteria are set out in summarised form below:
1. business decisions and costs are made in response to market conditions, and without significant State interference;
  2. accounting records are independently audited in line with international accounting standards, and applied for all purposes;
  3. there are no significant distortions carried over from former non-market economy system;
  4. legal certainty and stability is provided by bankruptcy and property laws;
  5. currency exchanges are carried out at the market rate.
- (42) Six exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers. The Commission sought and verified at the premises of these six companies all information submitted in the MET applications and deemed necessary.
- (43) The investigation revealed that three of the six Chinese exporting producers fulfilled all of the conditions for granting MET. The three exporting producers in the PRC which obtained MET are:
- Hebei Jiheng Chemical Co. Limited
  - Puyang Cleanway Chemicals Limited
  - Heze Huayi Chemical Co. Limited.
- (44) The remaining three claims had to be rejected. The following table summarises the determination for the three companies for which MET was not granted against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

Company	Criteria				
	Article 2(7)(c) indent 1	Article 2(7)(c) indent 2	Article 2(7)(c) indent 3	Article 2(7)(c) indent 4	Article 2(7)(c) indent 5
1	Not met	Met	Met	Met	Met
2	Not met	Not met	Not met	Met	Met
3	Met	Not met	Not met	Met	Met

Source: Verified questionnaire replies of cooperating Chinese exporters.

- (45) The companies concerned and the complainant were given an opportunity to comment on the above findings. The three exporting producers that were not granted MET submitted that the determination was wrong and that MET should be granted to them.

## Comments from company 1

- (46) Company 1 argued that the major reason to reject their claim for MET was that the State indirectly owns a majority share (60 %) of it. However, the company pointed out that state interference regarding decisions of the company could not be demonstrated. Moreover, it argued that, due to its listing on the Shanghai Stock Exchange, and the criteria to be met in order to be listed on this stock exchange, should safeguard against any undue state interference.
- (47) The aim of the investigation is, *inter alia*, to assess to which extent the State *could* interfere in business decisions, and which measures were taken by the company to prevent such interference.
- (48) In this regard, it was found that the State held the majority of the Director posts on the Board of Directors, and that there were no restrictions on the State-appointed Directors' voting rights on the Board (minority protection). The company failed to demonstrate that appropriate measures have been taken to prevent such State interference in the future.
- (49) Finally, whereas the listing on the Shanghai Stock exchange implies, *inter alia*, that the Board of Shareholders must appoint at least 3 'independent Directors' (individuals that do not represent the shareholders and that have professional qualification relevant to the operations of the company), a listing on a stock exchange itself does not safeguard against undue state interference. As already mentioned, there were no voting restrictions in force that could prohibit the state-appointed majority of the Directors to take decisions against the will of the independent Directors, who are in minority.

## Comments from company 2

- (50) Company 2 argued that the reason to reject their claim for MET, namely that the state controlled company 2 through direct and indirect ownership of three other companies that in their turn held the majority of the shares in company 2, was flawed. More specifically, it questioned the reasoning that the company 'ABC', which holds 48 % in company 2, was dominated by the State, since 80 % of the ABC's shares were held by employees which were represented by a Staff Committee. Company 2 disputed the argument that the Staff Committee in ABC was controlled by the state.
- (51) Concerning ownership and control of ABC, it should be emphasized that ABC was not the company subject to the MET investigation. However, since the State owns 20 % of ABC, and the remaining 80 % was distributed between more than 1 000 employees, it is not unreasonable to conclude that the State was the single biggest shareholder and, as such, has *de facto* control over ABC.
- (52) Company 2 also argued against the conclusion that it was found to be *de facto* closely linked to another company: 'DEF'. The basis for this conclusion by the Commission was that company 2 (i) shared the same premises as DEF (company 2 'subleased' the land-rights from DEF); (ii) purchased some of the most important raw materials from DEF; and (iii) had lent a significant amount of money to DEF. Company 2 argued that all of these observations could be commercially explained and that in any event none of them proved integration into DEF.
- (53) It should first be noted that DEF is indirectly controlled by the State. Secondly, whereas behind each of the observations mentioned in the previous recital, there may be reasons that could be commercially explained, this does not contradict the conclusion that company 2 is closely linked to DEF. Indeed, the main argument against granting MET under this criterion are not the links themselves, but that company 2 has such links with a company which is *de facto* state-controlled.
- (54) Indeed, company 2 has *de jure* been found to be state-controlled through 3 different state-controlled shareholders, and *de facto* under significant state-control through its links with the state-controlled shareholder DEF. On the basis of the foregoing, and in the absence of any measures that had been taken by the company to prevent such interference, there is a clear risk of state interference.

- (55) Company 2 also argued that the fact that the money lent to DEF, which it admitted had not been accounted for in accordance with International Accounting Standards (IAS), did not have any effect on the calculation on the normal value and could therefore not be held against it in respect of whether it met the criteria for MET.
- (56) To borrow money from a bank and to lend it to one of its (state-controlled) shareholders (notwithstanding all other legal aspects such as the protection of the interest of other minority shareholders and other creditors) had not been accounted for in accordance with IAS. On the basis of the preceding, also taking into account the significant amount involved and that the auditors did not react on this item, it is concluded that this company did not meet criterion 2.

#### Comments from company 3

- (57) Company 3 argued that the reason for not granting this company MET, namely that the accounts were not kept in accordance with IAS, did not have any effect on the calculation on the normal value and could therefore not be grounds for refusing to grant MET.
- (58) The reason this company was considered not to have met criterion 2 was that there was an erroneous entry into the company's books of an acquisition of land-rights. The amount involved was significant and the erroneous entry was also reflected in the annual report. The auditors did not react on this. On the basis of the preceding, it is concluded that this company does not meet criterion 2.

#### Comments from the complainant

- (59) The complainant argued against granting any of the companies MET. The complainant claimed, *inter alia*, that, as Chinese companies applied Chinese accounting standards (and were audited by Chinese auditing firms) which were not necessarily the same as IAS, this would have been a violation of criterion 2. Moreover, it argued that, as the Chinese currency is pegged to the USD by a decision of its government, the currencies had not been exchanged at market rates by any of the co-operating exporters - this would have been a violation of criterion 5. On the basis of a 'cumulative assessment of the criteria', the complainant argued that none of the co-operating exporters in the PRC could qualify for MET.
- (60) Chinese companies are by law obliged to keep their accounting records in accordance with the Accounting Law of the PRC, as well as to have a Chinese auditor. This cannot be held against any company applying for MET. Indeed, the Accounting Law has been introduced in order to implement international accounting standards in the PRC. As the consistent practice of the Institutions has shown, the law itself does not constitute any obstacle in obtaining MET.
- (61) Hence, the purpose of the verification of criterion 2 is primarily whether the Chinese Accounting Law is properly implemented in line with international accounting standards. It also examines whether the accounting records have been independently audited, in line with IAS.
- (62) The fact that the Chinese currency RMB is pegged to the USD is a decision by the Chinese government, against which an applicant for MET cannot be held responsible. Similar decisions have in the past also been taken by other countries, notably in Latin America. Again, it is the consistent practice of the Institutions to consider this criterion as fulfilled if the company uses the official exchange rate for all its transactions involving foreign currencies. Thus, it is ensured that no black market practices are applied. Indeed, all of the co-operating exporters in this investigation were found to be able to purchase and sell foreign currencies obtained in their business operations, despite the fact that the exchange rate RMB/USD is pegged.
- (63) Thus, the arguments forwarded by the complainant have been rejected.



## 2.2. *Individual treatment*

(64) A country-wide duty, if any, is established for countries falling under Article 2(7) of the basic Regulation, except in those cases where a company receives MET pursuant to Article 2(7)(c) or if a company is able to demonstrate, in accordance with Article 9(5) of the basic Regulation, that

1. partly or wholly foreign owned firms and joint ventures are free to repatriate capital and profits;
2. their export prices and quantities as well as the conditions and terms of the sales are freely determined;
3. the majority of the shares belong to private persons;
4. exchange rates are carried out at market rates;
5. any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.

(65) The six exporting producers, as well as requesting MET, also claimed individual treatment in the event they were not granted MET. On the basis of information available, it was found that one of the companies which could not be granted MET met all of the requirements for IT, set forth in Article 9(5) of the basic Regulation.

(66) The two remaining companies which could not be granted MET were found to be predominantly state owned. For these companies, the risk of State interference was deemed significant. Given the nature of the product concerned, which cannot be identified as having been produced by a particular producer in conjunction with State ownership, the risk of circumvention of measures by way of exporting via a company with a lower level of duty was also deemed significant. Consequently, the conditions set in Article 9(5)(c) and (e) of the basic Regulation were not met. It was therefore decided not to grant them IT.

(67) It was therefore concluded that IT should be granted to the following exporting producer in the PRC:

— Zhucheng Taisheng Chemical Co. Limited.

## 2.3. *Determination of Normal Value*

### 2.3.1. *Determination of normal value for the exporting producers not granted MET*

#### (a) *Analogue country*

(68) According to Article 2(7) of the basic Regulation, for non-market-economy countries and, to the extent that MET could not be granted, for countries in transition, normal value has to be established on the basis of the prices or constructed value in an analogue country.

(69) In the notice of initiation, the Commission indicated its intention to use Mexico as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited interested parties to comment on this.

- (70) One Community importer objected to this proposal, alleging that Mexico was not representative since it had, on 20 December 2002, imposed anti-dumping measures on imports on TCCA originating in the PRC, thereby cutting off competition on the Mexican market. As the known producer of TCCA in Mexico declined to cooperate in the investigation, the Commission had, in any event, to seek an alternative analogue country which could be considered representative. Further to contacts with the complainant and with co-operating exporting producers, it was clear that there remained only two other countries which could be representative, the United States of America and Japan.
- (71) Since the United States of America, on 4 June 2004, had launched an anti-dumping investigation on imports of TCCA originating in, *inter alia*, Spain, and that the Commission, on 13 October 2004, announced the initiation of an anti-dumping proceeding with regard to imports into the Community of TCCA originating in the United States of America (see recital 4), it was considered unlikely that any exporting producer in the United States of America would be willing to cooperate.
- (72) Finally, following contacts with producers of TCCA in Japan, one Japanese producer was willing to co-operate in the proceeding.
- (73) No co-operating party has objected to the proposal to base the normal value on the basis of information obtained from the Japanese producer.
- (74) In view of the above, it is concluded that Japan constitutes an appropriate analogue country in accordance with Article 2(7) of the basic Regulation.

(b) *Determination of normal value*

- (75) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of constructed normal value provided by the Japanese producer for comparable product types. The amounts for SG&A were taken on the basis on the turnover of the product concerned in relation to the turnover for the company, whereas the profit margin was taken from the profit margin for the company as a whole.

2.3.2. *Determination of normal value and export prices for exporting producers granted MET*

(a) *Normal Value*

- (76) The companies granted MET were requested to submit a full questionnaire reply including domestic sales information- and information on costs of production of the product concerned and these replies were verified at the premises of the companies concerned.
- (77) As far as the determination of normal value is concerned, the Commission followed the same methodology as the one explained in recitals 25 to 33.
- (78) In the absence of sufficient domestic sales in the ordinary course of trade by each of the companies granted MET, the Commission constructed normal value for each company by adding to the manufacturing costs of the exported types a reasonable amount for selling, general and administrative expenses (SG&A) on the basis of turnover and a reasonable margin of profit (based on domestic sales under ordinary course of trade).

(b) *Export prices*

- (79) All export sales to the Community of exporters granted MET were made directly to independent customers in the Community. The export price was therefore established, pursuant to Article 2(8) of the basic Regulation, on the basis of the prices actually paid or payable.

- (80) When Chinese companies export the product concerned they are entitled to a VAT reimbursement of 13 % of the turnover on an FOB basis. However, the VAT that the companies have to charge on their accounts is 17 % of the turnover on an FOB basis. An allowance to reflect this difference of 4 % was therefore taken into account when calculating the export price.

(c) *Comparison*

- (81) The comparison was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in commission, freight, insurance, handling costs, packaging cost, credit costs, bank charges and inspection costs were made.

2.4. *Dumping margin*

2.4.1. *For the cooperating exporting producers granted MET/IT*

- (82) For the three companies granted MET, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.
- (83) For each product type exported to the Community by the company granted individual treatment, the weighted average normal value, established in the analogue country, was compared with the weighted average export price of the corresponding type exported to the Community, as provided for under Article 2(11) of the basic Regulation.
- (84) The provisional weighted average dumping margins expressed as a percentage of the cif Community frontier price duty unpaid are:

Hebei Jiheng Chemical Co. Limited	16,8 %
Puyang Cleanway Chemicals Limited	17,4 %
Heze Huayi Chemical Co. Limited	9,2 %
Zhucheng Taisheng Chemical Co. Limited	39,0 %

2.4.2. *For all other exporting producers*

2.4.2.1. *Methodology applied*

- (85) In order to calculate the duty applicable to all other exporters in the PRC, the Commission first established the level of co-operation. A comparison was made between the total imports of the product concerned originating in the PRC calculated on the basis of information in the complaint and the actual questionnaire replies received from exporters in the PRC. On this basis, it was established that the level of co-operation was considered to be around 70 %.

2.4.2.2. *For co-operating exporting producer not granted MET/IT*

- (86) The dumping margin for the two co-operating exporters, which were neither granted MET nor IT, was calculated on the basis of the weighted average of the individual dumping margins calculated for each of these two exporters. The latter were calculated by comparing the weighted average normal value established for the analogue country and the weighted average export price reported by the two exporters concerned.

- (87) The provisional weighted average dumping margins expressed as a percentage of the cif Community frontier price, duty unpaid are:

Nanning Chemical Industry Co. Limited	39,0 %
Changzhou Clean Chemical Co. Limited	39,0 %

2.4.2.3. *For all other exporting producers*

- (88) The country-wide dumping margin applicable to all other exporters in the PRC, i.e. for exporters that did not co-operate in the proceedings, has been set at the of the dumping margin established for those representative types of the product concerned with the highest dumping margins for the two exporters which were not granted MET (recital 86).
- (89) On this basis, the country-wide level of dumping was provisionally established at 40,3 % of the cif Community frontier price.

**3. United States of America (USA)**

- (90) Three exporting producers are known to produce TCCA in the USA. Questionnaire replies were received from two exporting producers and five importers related to those exporters.
- (91) On-spot verification visits were carried out only in the premises of the co-operating exporters. Data pertaining to related importers in the Community have not yet been verified and for these companies, findings at this stage of the proceeding are thus based on a desk analysis.

3.1. *Normal value*

- (92) For certain types of TCCA exported by the American exporting producers, the Commission established normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2(1) of the basic Regulation. For certain types of TCCA, normal value had to be constructed by adding to each exporter's manufacturing costs of the exported types, a reasonable amount for (SG&A) and a reasonable margin of profit, in accordance with Article 2(3) of the basic Regulation. To this end, it was examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data. Where the domestic sales were not sold in the ordinary course of trade, a weighted average SG&A expenses and profit margin derived from the overall expenses of the company having representative sales made in the ordinary course of trade was used.

3.2. *Export price*

- (93) One of the American exporting producers made export sales to the Community both directly to independent customers and via related importers in the Community. The other American exporting producer made export sales to the Community market only through related importers in the Community. For sales made directly to independent customers in the Community, the export price was established, pursuant to Article 2(8) of the basic Regulation, on the basis of the prices actually paid or payable. For sales made via related importers in the Community, constructed export prices have been established pursuant to Article 2(9) of the basic Regulation.

3.3. *Comparison*

- (94) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, claimed allowances for differences in transport, insurance, handling charges, commissions, credit, packing and bank charges have been provisionally granted.

#### 3.4. *Dumping margin*

- (95) As provided by Article 2(11) of the basic Regulation, the weighted average normal value of each type of the product concerned exported to the Community was compared to the weighted average export price of each corresponding type of the product concerned.
- (96) The comparison showed the existence of dumping in respect of the co-operating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community border, duty unpaid are the following:
- Biolab Inc.: 68,4 %
  - Clearon Inc.: 69,8 %.

On the basis of the information available, it appears that the non-cooperating company is the largest producer of TCCA in the USA. The residual provisional margin was therefore established at the level of the highest dumping margin found on the basis of the highest dumped and representative product type for one of the co-operating companies. This should ensure the effectiveness of any measures.

- Residual dumping margin: 98,5 %.

### C. INJURY

#### 1. **Community production**

- (97) During the IP-PRC and the IP-US (IPs) TCCA was manufactured by three companies:
- one complainant Community producer, which fully co-operated with the Commission during the investigation,
  - one producer, which fully supported the complaint. It provided some general information concerning its production and sales in the framework of the proceeding regarding the PRC, but did not co-operate in the proceeding regarding the USA,
  - one producer which remained silent at the complaint stage. It provided some general information concerning its production and sales in the framework of the proceeding regarding the PRC and is in favour of the imposition of anti-dumping measures against the PRC. It did not co-operate in the proceeding regarding the USA.
- (98) On the above basis, it was considered that the TCCA produced by all the above mentioned companies constitute the Community production within the meaning of Article 4(1) of the basic Regulation.

#### 2. **Definition of the Community industry**

- (99) As mentioned in recital 97 above, only one Community producer, who supported the complaint fully co-operated in the investigations. This producer represented a major proportion of the total Community production of TCCA during the IPs, in this case more than 50 %. On this basis, it was deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

### 3. Community consumption

#### 3.1. Preliminary remarks

##### 3.1.1. Import data

- (100) Eurostat information, related to volumes and values of CN Codes including TCCA (ex 2933 69 80 and ex 3808 40 20) could not be used to establish the level of imports on the Community market since they also include products not concerned by the investigation. However, the overall level of the Community consumption resulting from the calculation described below was checked and found to be in line with that in submissions made by other interested parties.

##### 3.1.2. Data relating to the People's Republic of China

- (101) Six Chinese exporting producers out of the 12 known to produce TCCA in China cooperated in the investigation and reported export volumes which represented less than 70 % of the export volumes mentioned in the complaint for 2003. In view of the low level of cooperation and in the absence of other information available, it was thus considered that the complaint should be used for the determination of volumes data from 2000 up to 2003. As far as the IPs are concerned, estimations were made on the basis of data available from the complaints for the year 2003 and the first quarter of 2004, duly adjusted to take account of the evolution of the exports of the co-operating exporters between 2003 and the IPs.

##### 3.1.3. Data relating to the United States of America

- (102) Two American exporting producers out of the 3 known to produce TCCA in the USA cooperated in the investigation and reported export volumes which represented less than 40 % of the export volumes mentioned in the complaint for 2003. It was thus considered that the complaint should be used for the determination of volumes data from 2000 up to 2003. As far as the IPs are concerned, estimations were made on the basis of data available from the complaints for the year 2003 and the first quarter of 2004, duly adjusted to take account of the evolution of the exports of the co-operating exporters between 2003 and the IPs.

##### 3.1.4. Data relating to the Community producers

- (103) Note that the two non-complainant Community producers only provided data relating to the IP-PRC. This also constituted a reasonable estimate for the IP-US since there was no significant change in the situation of these two companies between the IPs. For the complaining Community producer, its own data were used.

#### 3.2. Community consumption

- (104) Apparent consumption in the Community was established on the basis of:

— the total imports of the product concerned into the Community as reported in the complaint and estimations,

— the total verified sales volume of the Community industry on the Community market, and

— the sales data of the other Community producers who provided general information.

- (105) Community consumption reached 42 528 tonnes during the IP-PRC and 43 397 tonnes during the IP-US, which is respectively 74 % and 78 % above the level of consumption in 2000. The significant increase of TCCA consumption has been triggered by the development of the swimming pool market.

	2000	2001	2002	2003	IP-PRC	IP-US
EU Consumption (in kg)	24 449 095	27 928 554	31 598 949	38 710 981	42 528 818	43 397 965
<i>Index</i>	100	114	129	158	174	178

#### 4. Imports into the Community from the countries concerned

##### 4.1. Cumulative assessment of the effects of the imports concerned

(106) It was first examined whether imports from the PRC and the USA should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.

(107) It was found that:

- the dumping margins established in relation to the imports from each of the countries concerned were above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation,
- the volumes of imports from each of these countries were not negligible during the respective investigation period, as market shares for these countries ranged from 11 % to 50 %, and
- the cumulative assessment was found to be appropriate in view of the conditions of competition both between imports originating in these countries, and between these imports and the like Community product. This is evidenced by the fact that the level of undercutting, ranging from 21,1 % to 44,3 % is relatively similar, and that they use similar sales channels. Moreover, the investigation has shown that the imports concerned and the like product share the same physical and chemical characteristics. Finally, the imports concerned and the like product follow the same price trends.

(108) For this reason, it is provisionally concluded that all the criteria set out in Article 3(4) of the basic Regulation are met and that imports originating in the PRC and the USA should be assessed cumulatively.

##### (a) Volume and market share of imports concerned

(109) The volume of imports from the countries concerned drastically increased between 2000 and the IPs since they have been multiplied by more than 3. While these imports amounted to less than 8 200 tonnes in 2000 they reached a level of 24 809 tonnes during the IP-PRC and 26 483 tonnes during the IP-US. The increase of imports was particularly marked between 2000 and 2001 where they rose by almost 60 %. The increase continued to be significant since the average increase was 25 % per annum between 2001 and the IPs. Such increase is driven by the Chinese imports which were, in the IP-PRC, 7 times as high as in 2000 while at the same time, imports from the USA decreased by 38 % before increasing again until the end of the IP-US. As a consequence, the PRC became in 2001, the largest exporting country of the product concerned into the Community.

Imports (in kg)	2000	2001	2002	2003	IP-PRC	IP-US
People's Republic of China	2 801 000	8 350 000	11 990 000	17 885 000	21 466 882	21 875 643
<i>Index</i>	100	298	428	639	766	781
United States of America	5 355 000	4 538 000	4 040 000	3 165 000	3 343 000	4 607 651
<i>Index</i>	100	85	75	59	62	86
Total countries concerned	8 156 000	12 888 000	16 030 000	21 050 000	24 809 882	26 483 294
<i>Index</i>	100	158	197	258	304	325

- (110) The market share held by the countries concerned basically doubled, i.e. it went from 33 % to around 60 % between 2000 and the IPs i.e. + 27 percentage points. The increase was particularly marked between 2000 and 2001 when it went up by 13 percentage points.
- (111) The growth of the market share of the countries concerned should be seen in the light of the development of the growth of the market share of the Community industry during the period from 2000 to the IPs. While the countries concerned increased their market share by 27 percentage points since 2000, the Community industry's decreased by around 11 percentage points over the same period, and this despite increasing consumption.

Market shares	2000	2001	2002	2003	IP-PRC	IP-US
People's Republic of China	11 %	30 %	38 %	46 %	50 %	50 %
United States of America	22 %	16 %	13 %	8 %	8 %	11 %
Total countries concerned	33 %	46 %	51 %	54 %	58 %	61 %

(b) Price evolution

- (112) From the period 2000 up to 2003, prices of the imports from the countries concerned constantly decreased (by 40 % over this period). Chinese import prices decreased by 29 % between 2000 and the IP-PRC while American import prices decreased by 38 % between 2000 and the IP-US.

Unit prices (EUR/kg)	2000	2001	2002	2003	IP-PRC	IP-US
People's Republic of China	1,27	1,27	1,01	0,89	0,90	
<i>Index</i>	100	100	80	70	71	
United States of America (between ... and)	1,65-1,70	1,70-1,75	1,45-1,50	1,05-1,10		1,00-1,05
<i>Index</i>	100	103	88	64		62
Total countries concerned	1,54	1,44	1,14	0,93		
<i>Index</i>	100	93	74	60		

(c) Price undercutting

- (113) For the determination of price undercutting the Commission analysed price data referring to the IPs. The relevant sales prices of the Community industry are net prices after deduction of discounts and rebates. Where necessary, these prices were adjusted to an ex-works level. Countries concerned import prices compared are also net of discounts and rebates and are adjusted where necessary to cif Community frontier.
- (114) The Community industry's sales prices and the import prices of the countries concerned were compared at the same level of trade, namely independent customers within the Community market.
- (115) During the IP-PRC, weighted average price undercutting margins, expressed as a percentage of the Community industry's sales prices, ranged from 38,3 % to 44,3 % for the Chinese exporters. The weighted average price-undercutting margin was 39,4 %.



- (116) During the IP-US, weighted average price undercutting margins, expressed as a percentage of the Community industry's sales prices, ranged from 19,7% to 50,6% for the American exporters. The weighted average price-undercutting margin was 29%.

#### 5. Situation of the Community industry

- (117) In accordance with Article 3(5) of the Basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 2000 (base year) to the IPs.

##### 5.1. Production, production capacity and capacity utilisation

(Index 100 in 2000)	2000	2001	2002	2003	IP-PRC	IP-US
Production	100	100	98	124	115	101
Production capacity	100	100	98	130	130	116
Capacity utilisation	100	100	100	95	88	87

- (118) As shown in the table above, production during the period 2000 to the IP-PRC increased by 15% but subsequently decreased to reach during the IP-US the same level as in 2000. In view of the promising evolution of the demand on the Community market which increased by 14% between 2000 and 2001 and then by another 13% between 2001 and 2002, and also to introduce state of the art environmentally friendly technology, the Community industry decided in 2001/2002 to set up a new factory which started to produce in mid 2003 while at the same time the old plant was shut down. Therefore, the production capacity increased by 30% between 2000 and the IP-PRC since during the IP-PRC, two factories were, at least partially operating, while during the IP-US, only the new factory produced. The new factory allowed to set the production capacity at a higher level to meet the increasing demand on the Community market. The level of capacity during the IP-US reflects the capacity after the old factory was definitively shut down. Consequently, the production capacity could be increased by 16% between 2000 and the IP-US. As a consequence of the increasing capacity and the deterioration of the production level as from 2003, the capacity utilisation went down by 12 percentage points between 2000 and the IP-PRC and by 13 percentage points between 2000 and the IP-US. This points to the fact that although the Community industry had the technical ability to participate in the market growth it was prevented to do so by the increasing low-priced imports.

##### 5.2. Stocks

- (119) The figures below represent the volume of stocks at the end of each period.

(Index 100 in 2000)	2000	2001	2002	2003	IP-PRC	IP-US
Stocks	100	133	131	118	104	57

- (120) The level of stocks increased by 4% between 2000 and the IP-PRC and decreased again between the two IPs. This is the result of the seasonality of the product whose the bulk of the sales takes place in the first couple of months of each calendar year. The stock levels at the end of the IP-PRC reflect the preparation of such sales while, for the same reason, the low level of the stocks at the end of the IP-US reflects the end of the sales season. For these reasons, the stocks are not considered as pertinent indicators.

### 5.3. Sales volume, market shares, growth and average unit prices in the EC

- (121) The table below shows the Community industry's performances in relation to its sales to independent customers in the Community.

<i>(Index 100 in 2000)</i>	2000	2001	2002	2003	IP-PRC	IP-US
Sales volume	100	107	106	98	91	100
Market Share	100	94	82	62	52	56
Average unit prices	100	112	100	92	92	88

- (122) The Community industry's sales volumes have decreased by 9 % between 2000 and the IP-PRC. They have firstly increased by 7 % between 2000 and 2001, then regularly decreased until the end of the IP-PRC and then rose again to finally reach in the IP-US almost the same level as in 2000. This rise of the sales volumes between the IP-PRC and the IP-US should be seen in the light of the evolution of the Community consumption which rose by 2 % between the IP-PRC and the IP-US, and also in the light of the sales prices evolution which decreased by almost 4 % between the two IPs.
- (123) The market share of the Community industry continuously decreased between 2000 and the IP-PRC and slightly increased between the two IPs. However, since 2000, the market share of the Community industry overall dramatically decreased by more than 10 percentage points. The decrease was particularly marked between 2002 and 2003 when the Community industry lost 5 percentage points of the Community consumption.
- (124) Whilst the Community industry could initially benefit from the increased consumption and from the increase in average sales prices, this growth abruptly stopped in 2001, as dumped imports from the countries concerned forced the Community industry to cut its average sales prices which dropped by 12 % between 2001 and 2002. Overall, Community industry prices decreased by 8 % between 2000 and the IP-PRC and by 12 % between 2000 and the IP-US.

### 5.4. Profitability, Return on Investments and Cash Flow

<i>(Index 100 in 2000)</i>	2000	2001	2002	2003	IP-PRC	IP-US
Profitability on EC Sales	100	127	74	41	48	43
Return on Total Assets	100	125	60	9	-9	-9
Cash Flow	100	123	61	29	28	28

- (125) The profitability significantly decreased between 2000 and the IP-PRC since it declined by 8 percentage points and decreased even further until the end of the IP-US since it went down by 0,8 additional percentage points. First, despite an increase in the cost of production between 2000 and 2001, the profitability of the Community industry gained 4 percentage points when sales volumes and sales prices could be increased. Subsequently, and despite a decrease in the cost of production, the profitability declined by 12 percentage points between 2001 and the IP-PRC and 13 percentage points between 2001 and the IP-US when sales prices followed a decreasing trend.
- (126) The profit level reached during the IPs was less than half of the level reached in 2000. Both the return on total assets and the cash flow show the same trends as the profitability, namely an improvement from 2000 to 2001, followed by a deterioration from 2001 to the IPs. Given that no data permitting a separate identification of the like product production as to the assets, were available, return on total assets and cash flow were, in accordance with Article 3(8) of the basic Regulation, established on the basis of the narrowest group of products which included the like product and for which information was available i.e. Chlorinated isocyanurates.

### 5.5. Investments and ability to raise capital

(Index 100 in 2000)	2000	2001	2002	2003	IP-PRC	IP-US
Investments	100	16 202	44 015	5 401	2 848	1 420

- (127) As explained in recital 118, the Community industry invested in new installations in 2001 and 2002. This explains why investments increased as from 2001 to reach a peak in 2002, i.e. the year the new factory was set up, and then decreased until the IPs.
- (128) The Community industry's ability to raise capital, was not seriously affected during the period considered.

### 5.6. Employment, Productivity and Wages

(Index 100 in 2000)	2000	2001	2002	2003	IP-PRC	IP-US
Number of employees	100	97	118	107	82	74
Employment costs	100	103	118	137	110	86
Productivity (tonne/employee)	100	103	83	115	141	137

- (129) As seen above, the Community industry increased its production by 15 % between 2000 and the IP-PRC. Despite the increase, the number of employees in production diminished to reach in the IP-US the same level of production as in 2000 with a 26 % reduction in the number of employees.
- (130) This is due to the fact that the Community industry has invested in new installations which do not require major increases in the work force. As a consequence, the productivity increased by around 40 % between 2000 and the IPs, while at the same time the employment costs increased by 10 % between 2000 and the IP-PRC but decreased between the two IPs.

### 5.7. Recovery from past dumping or subsidization

- (131) There were no indications that the Community industry was recovering, during the IPs, from the effects of any past dumping or subsidization.

### 5.8. Magnitude of the actual margin of dumping

- (132) The dumping margins specified in the dumping part are clearly above *de minimis*, as defined in Article 9(3) of the basic Regulation. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margins of dumping cannot be considered negligible.

## 6. Conclusion on injury

- (133) Between 2000 and the IPs, the volume of the dumped imports of the product concerned increased significantly (multiplied by 3) and their share of the Community market went from 33 % in 2000 to 58 % in the IP-PRC and 61 % in the IP-US. The average prices of dumped imports were consistently lower than those of the Community industry during the same periods. During the IPs, the prices of the imports from the countries concerned undercut those of the Community industry by more than 36 %.

- (134) A deterioration of the situation of the Community industry has been found between 2000 and the investigation periods: the Community industry's sales volumes decreased or remained at the same level as in 2000, the capacity utilisation decreased by more than 10 %, the market share lost more than 10 percentage points, the unit sales price declined by more than 7 % and the profitability decreased by more than 8 percentage points while, the return on investments and the cash-flow from operating activities followed the same negative trend. Although some injury indicators remained stable or experienced positive developments, as for example the production capacity and the investments, it should be noted that while this apparent improvement occurred at a time when demand was booming, the Community industry could not really benefit from this growth of the demand which increased by more than 70 % between 2000 and the IPs.
- (135) In view of the above, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

#### D. CAUSATION

##### 1. Preliminary remarks

- (136) In accordance with Article 3(6) of the basic Regulation, it was examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the countries concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined other factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.
- (137) The volume of TCCA originating in the countries concerned increased dramatically during the period considered. As can be seen in the table under recital 109, the imports concerned were, in the IPs, 3 times as high as in 2000, i.e. an increase from 8 200 tonnes in 2000 to around 25 000 tonnes in the IPs. During the same period of time, their market share significantly increased by 27 percentage points i.e. from 33 % to 60 %.
- (138) The most important increase in volume took place between 2000 and 2001 when they increased almost by 60 %.
- (139) The substantial increase in the volume of imports originating in the countries concerned and their prices which constantly decreased since 2001 and which remained well below those of the Community industry, coincided in time with the deterioration of the situation of the Community industry during the very same period.
- (140) Indeed, (see recitals 115 and 116 above), the imports concerned, which were made in very substantial quantities, undercut the average sales price of the Community industry with significant amounts i.e. around 36,6 %.
- (141) It is therefore provisionally concluded that the pressure exerted by the imports concerned, which significantly increased their volume and market share from 2000 onwards, and which were made at low dumped prices, played a determining role in causing price decreases and loss of market shares for the Community industry and, as a consequence, a deterioration of its financial situation.

##### 2. Effect of other factors

###### (a) *Development of consumption*

- (142) Between 2000 and the IPs, the Community consumption increased by more than 70 %. The development of consumption thus has not contributed to the injury suffered by the Community industry. To the contrary, under normal market conditions, the Community industry could have expected an increase in its sales volumes.

## (b) Imports from other third countries

- (143) The imports from third countries not concerned by this investigation showed the following development during the period considered:

	2000	2001	2002	2003	IP-PRC	IP-US
Imports from third countries other than the countries concerned (in kg)	4 433 000	3 446 000	3 020 000	2 421 000	1 981 496	1 908 613
<i>Index</i>	100	78	68	55	45	43
Market Share	18 %	12 %	10 %	6 %	5 %	4 %

- (144) The main exporting country not concerned by these investigations is Japan. Imports from Japan continuously decreased between 2000 and the IPs to reach a 5 % market share in the IPs. There is no reason to believe that Japanese prices have had a downward effect on the prices of the Community industry.

## (c) Evolution of the currencies: USD versus EUR

- (145) Some interested parties argued that the price evolution of the imports concerned was influenced by the evolution of the Euro vis-à-vis the US dollar and the Yuan Renminbi (pegged to the USD). It is true that between 2001 and the IP-US, the US dollar continuously depreciated, i.e. from 1,12 EUR to 0,84 EUR or - 25 %. However, it should be noted that the USD price of the imports concerned also decreased i.e. by 28 % between 2000 and 2003. More specifically, the Chinese unit export prices in USD decreased by 11 % between 2000 and the IP-PRC, and the American unit export price in USD decreased by 21 % between 2000 and the IP-US. Therefore, the price decrease of the exports concerned cannot be fully explained by the currency fluctuations since the decrease is also significant in USD.

	2000	2001	2002	2003	IP-PRC	IP-US
PRC unit price in EUR/kg	1,28	1,28	1,02	0,90	0,91	
US unit price in EUR/kg (between ... and)	1,65-1,70	1,70-1,75	1,45-1,50	1,05-1,10		1,00-1,05
Countries concerned unit price in EUR/kg	1,54	1,44	1,14	0,93		
Exchange rate EUR/USD	0,927	0,896	0,936	1,118	1,163	1,186
<i>Index</i>	100	97	101	121	125	128
PRC unit price in USD/kg	1,18	1,14	0,95	1,01	1,06	
<i>Index</i>	100	97	80	85	89	
US unit price in USD/kg (between ... and)	1,55-1,60	1,50-1,55	1,35-1,40	1,20-1,25		1,20-1,25
<i>Index</i>	100	100	89	78		79
Countries concerned unit price in USD/kg	1,43	1,29	1,06	1,04		
<i>Index</i>	100	90	74	72		

Source of the exchange rates: <http://europa.eu.int/comm/budget/inforeuro/index.cfm?language=en>

(146) Moreover, it is noteworthy that the evolution of the currencies did not have the same effect on the two countries concerned. Whereas the volume of imports from the USA has decreased between 2000 and 2003, imports from the PRC have more than sextupled throughout this period. The fact that currency fluctuations did not have the same effect on both countries and did neither have an effect on imports from other countries, indicates that it cannot be considered as a causal factor for the surge of dumped imports from the PRC as argued by interested parties.

(147) As a consequence of the above, although the evolution of the Euro vis-à-vis the US dollar may have had an impact on the price of exports concerned, this impact was certainly not such as to break the causal link between the dumping and the injury.

*(d) Maturation of the TCCA market*

(148) One interested party claimed that the price decrease of the product concerned is due to the life cycle of the product which developed into a commodity product. It argued that, in parallel with the swimming pool market which is booming in the EC, the TCCA market became mature and that this product is now widely sold through supermarkets with a decreasing effect on prices.

(149) While the product itself may have reached some level of maturation, this cannot be said for the relevant market. On the contrary, the TCCA market developed in a very dynamic way. However, at the level of imports concerned – both in terms of prices and quantities – the development was not even dynamic, but abrupt. It should also be noted that the demand for TCCA is determined by the number of swimming pools installed and that, therefore, TCCA is an accessory. On the basis of the foregoing, the claim that the current injury is the effect of the maturity of the product concerned cannot be accepted.

*(e) Investment in capacity*

(150) One processor argued that the Community industry misjudged the market development by investing in new capacity and thus worsened its financial results by increasing depreciation charges and thus cost of production.

(151) First of all, it should be noted that the Community consumption increased by more than 70 % between 2000 and the IPs and that the Community industry's capacity increased by only 16 % over the same period. Such investments are therefore reasonable and in line with the expected market evolution.

(152) In addition, as mentioned in recital 125, the cost of production of the Community industry remained, in the IPs, at the same level as in 2000, which shows that any cost increase due to investments have been offset with other cost reductions and gains in efficiency.

*(f) Influence of one other European producer*

(153) Several interested parties that co-operated in the Chinese investigation argued that one of the other European producers would have been the first to reduce its prices on the Community market in order to gain market share.

(154) However, it was found that this further European producer which was not part of the Community industry, always charged between 2000 and the IP higher prices than the Chinese imports. Its prices continuously increased between 2000 and 2002 and then, started to decrease only between 2002 and 2003, at a time when the Chinese sales prices had already decreased by 30 % during the same period.

### 3. Conclusion of Causation

- (155) On the basis of the above, it is provisionally concluded that there is a causal link between dumped imports and the injury suffered by the Community industry. This conclusion is based, on the one hand, on the significant increases in volumes and market shares of the imports concerned, accompanied by a significant price decrease and substantial price undercutting, and, on the other the decrease in prices of the Community industry, the loss of market share and the consequent worsening financial situation. All these developments coincided in time. None of the other factors examined could have explained the deteriorating situation of the Community industry.

## E. COMMUNITY INTEREST

### 1. General considerations

- (156) It has been examined whether compelling reasons exist that could lead to the conclusion that it would not be in the Community interest to introduce anti-dumping duties against imports from the countries concerned. For this purpose and in accordance with Article 21(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users of the product concerned.
- (157) In order to assess the likely impact of the imposition or non-imposition of measures, information was requested from all interested parties. Questionnaires were sent to the three Community producers, 9 importers, 17 processors and 11 associations belonging to the downstream industry (processors/users).
- (158) Complete questionnaire replies were received from one Community producer (the complainant), 1 importer and 10 processors. Incomplete questionnaire replies or submissions were received from 4 importers and 4 processors. In addition, as mentioned under recital 97 the two other Community producers provided general information only in the framework of the proceeding regarding the PRC. Among the co-operating processors 2 were in favour of the measures, one said it would have no impact for it while the other co-operating processors as the co-operating importer were against measures.
- (159) Moreover, hearings have been held with some of the parties mentioned above.

### 2. Interest of the Community industry and other producers in the Community

- (160) In view of the conclusions on the situation of the Community industry set out at recital 134, especially in terms of market share, sales price and decreasing profitability, it is considered that, in the absence of measures against injurious dumping, the Community industry is likely to experience a worsening of its financial situation. Indeed, it is most likely that the production in the Community will decrease and that the processors and consumers will be significantly dependant on imports. The same negative development can reasonably be expected to happen for the two other producers in the Community.

### 3. Interest of importers

- (161) While 9 questionnaires were sent to importers, only one questionnaire reply was received. However, this importer was not able to provide precise information regarding the profitability of its sales of the product concerned. Therefore, it has not been possible to assess the likely effect of the proposed anti-dumping measures on the profitability of the co-operating importer. Nevertheless, this company had no significant investment directly related to the product concerned and its sales of the product concerned represent less than 1 % of the total turnover.

- (162) On the basis of the above, and given the large number of importers not cooperating in the proceeding, it is provisionally concluded that anti-dumping measures will not have such a negative impact on importers as a whole as to outweigh the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition.

#### 4. Interest of processors

- (163) The processing sector is composed of numerous companies which can be involved in the transformation of TCCA granules into tablets and/or in the repacking and the distribution of the product concerned.
- (164) A major claim against the imposition of measures is that the capacity of European producers is not sufficient to fulfil the Community demand.
- (165) It is recalled that, the imposition of anti-dumping duties is not intended to close this market to the countries concerned but to restore fair trade conditions and effective competition on the Community market. In that sense, imports concerned would continue to be present on the Community market, but at prices which are no longer injuriously dumped. Moreover, imports from third countries not subject to measures are likely to gain importance once injurious dumping from the countries concerned no longer takes place. It should be also noted that one of the European producers has a new factory which did not start the production because of the low price level on the Community market. Should effective competition be restored, it is likely that production will start and that supply will increase on the Community market. Finally, it is noteworthy that on the one hand, processors argued that the capacity is insufficient to fulfil the Community demand, and on the other hand, blamed the Community industry for having invested in new capacity that would have allegedly been a cause of injury.
- (166) On this basis, it is provisionally concluded that a risk of supply shortage does not exist. On the contrary, should the Community industry be put in a precarious situation and eventually close production facilities in the Community, users would be deprived of an important source of supply, which ensures rapid service and delivery time especially during the peak season.
- (167) Co-operating processors also argued that any anti-dumping duties will negatively affect their cost of production and margin.
- (168) TCCA represents more than 40 % of the users' total cost of production of products incorporating the product concerned which means that an imposition of a duty would have an impact on their costs of production. However, since the processors do not have only one supplier, any assessment of the impact of the duties needs to be weighted both by the proportion of each supplier in the purchase of raw materials, and by the individual duty imposed on each of these suppliers. It is therefore likely that the duties will not affect 40 % of the cost of production but only part of it. In any event, given the number of companies in the distribution chain, it is likely that the effect of the duty will be diluted through the distribution chain and that any price increase will at most only be passed partially.
- (169) In addition, it should be noted that the supply of TCCA to the Community market by non-dumping companies or countries not concerned by these investigations became less attractive owing to the strong price pressure exerted by the countries concerned. It is therefore highly likely that, should fair competition be re-established, non-dumping companies will increase their presence on the Community market. As the Community industry still has free capacity and given there is also the possibility of sourcing from countries or companies not subject to anti-dumping duty, price increases, if any, are expected to be moderate.



- (170) Moreover, the impact of the duties on the processors should be evaluated on a more global basis. Indeed, TCCA also permits the processors to sell more profitable products and to generate profits on other segments. Indeed, there are synergies in terms of sales between the product concerned and other products sold by the processors such as other chemicals and/or equipments. This is why the product concerned has been described by certain processors as a 'loss leader product' which although being a low margin product cannot be abandoned since it is an appeal product which must be part of the catalogue.
- (171) It is also interesting to note that processors' low profits in the TCCA segment have been obtained in spite of imports at hugely dumped prices. This casts considerable doubts on the viability of the TCCA segment of the processing industry.
- (172) However, an imposition of anti-dumping measures, by restoring effective competition, could even help the processors to recover viable margins. It should indeed be noted that the origin of the product sold by the processors is generally not known by their customers. Processors generally purchase the product concerned from several suppliers and sell it at one average price whatever is the origin. Therefore, the imposition of any measure will be on the one hand, an opportunity for those processors to revise their prices somewhat upward, and on the other hand, to mix the most appropriate sources of supply so that their resulting average cost allow them to reach better profit levels. Thus, measures could have some stabilising effect on the downstream market which rapidly developed these last years with a lot of companies now operating and competing to each other.

#### 5. Interest of consumers

- (173) Consumers of TCCA are either public or private swimming pool owners who use the product concerned as a disinfectant.
- (174) According to the specialized press, the annual pool maintenance cost is estimated at around 834 EUR per year, of which 30 % is for chemicals (thus 587 EUR for accessories and 247 EUR for chemical products). TCCA represent only part of these 247 EUR since chemicals are also used for pH regulation, disinfection, algae prevention, and flocculation.
- (175) One processor provided some unsubstantiated information regarding the impact of any measures on final consumer. On the basis of this information, it would appear that a duty of 77 % on the product concerned would involve a cost increase of 2,5 EUR per month for a private swimming pool owner. As details of this calculation have not been provided, it can reasonably be assumed that this calculation is at most based on the worst case scenario, i.e. a private owner who would use only Chlorine products for disinfecting and who would buy TCCA in a shop being supplied only by the exporters with a duty rate of 77 %. It should nevertheless be underlined, that this 2,5 EUR figure is very close to speculation. Moreover, given the actual duty levels proposed and the possibility for importers, processors and retailers to switch from one supplier to another or to mix their sources of supply, it can be assumed that such a 2,5 EUR increase is largely over evaluated.
- (176) However, given the number of intermediaries from the import of TCCA to the final consumers, it is considered that the impact of any anti-dumping measures on consumers will not be significant. Indeed, the booming of the swimming pool sector gave rise to a large downstream sector amongst which importers/traders, tablets manufacturers, packers, labellers as well as distributors. Therefore, assuming that the increase due to the duty would be partially absorbed by each step of the supply chain and eventually not fully passed on to the final consumer, the cost increase would then be less than 2,5 EUR per month.
- (177) On the basis of the above, the likely impact on consumers was considered not to constitute a compelling reason against the imposition of provisional measures, as it seems that the consumers will not be unduly affected by the imposition of measures and that a possible negative effect on consumers is unlikely to offset the positive effect of measures on the Community industry.

## 6. Conclusion on Community interest

- (178) On the basis of the above, it is provisionally concluded that there are no compelling reasons not to impose provisional anti-dumping measures.

## F. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

### 1. Injury elimination level

- (179) In view of the provisional conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (180) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (181) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 10 % of turnover. As demonstrated by the profit level of the Community industry before the imports concerned into the Community started to significantly increase, this 10 % profit can be considered as very conservative and reasonably expected in the absence of injurious dumping.
- (182) On this basis a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin of 10 % to the cost of production.
- (183) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price. Any difference resulting from this comparison was then expressed as a percentage of the average import cif value.

### 2. Provisional measures

- (184) In the light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not be higher than the injury margin calculated above in accordance with Article 7(2) of the basic Regulation.
- (185) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigations. Therefore, they reflect the situation found during these investigations with respect to the cooperating companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(186) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission<sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

(187) The proposed anti-dumping duties are the following:

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate
PRC	Hebei Jiheng Chemical Co. Limited	62,6 %	16,8 %	16,8 %
	Nanning Chemical Industry Co. Limited	60,6 %	39,0 %	39,0 %
	Changzhou Clean Chemical Co. Limited	60,6 %	39,0 %	39,0 %
	Zhucheng Taisheng Chemical Co. Limited	61,1 %	39,0 %	39,0 %
	Puyang Cleanway Chemicals Limited	78,9 %	17,4 %	17,4 %
	Heze Huayi Chemical Co. Limited	62,8 %	9,2 %	9,2 %
	All other companies	60,6 %	40,3 %	40,3 %
USA	Biolab Inc.	20,8 %	68,4 %	20,8 %
	Clearon Inc.	28,5 %	69,8 %	28,5 %
	All other companies	33,8 %	98,5 %	33,8 %

#### G. FINAL PROVISION

(188) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of trichloroisocyanuric acid and preparations thereof, also referred to as 'symclosene' under the international non-proprietary name (INN), and falling within CN codes ex 2933 69 80 and ex 3808 40 20 (TARIC codes 2933 69 80 70 and 3808 40 20 20), originating in the People's Republic of China and the United States of America.

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

<sup>(1)</sup> European Commission  
Directorate-General for Trade  
Direction B  
Office J-79 5/16  
B-1049 Brussels.

Country	Company	Anti-dumping duty rate	TARIC additional Code
PRC	Hebei Jiheng Chemical Co. Limited	16,8 %	A604
	Nanning Chemical Industry Co. Limited	39,0 %	A625
	Changzhou Clean Chemical Co. Limited	39,0 %	A626
	Zhucheng Taisheng Chemical Co.	39,0 %	A627
	Puyang Cleanway Chemicals Limited	17,4 %	A628
	Heze Huayi Chemical Co. Limited	9,2 %	A629
	All other companies	40,3 %	A999
USA	Biolab Inc.	20,8 %	A594
	Clearon Inc.	28,5 %	A596
	All other companies	33,8 %	A999

3. The provisions in force concerning customs duties shall apply, unless otherwise specified.

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

#### Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 30 days of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

#### Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 1 of this Regulation shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 April 2005.

For the Commission  
Peter MANDELSON  
Member of the Commission