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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1631/2005

of 3 October 2005

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. **PROCEDURE**

1. *PROVISIONAL MEASURES*

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

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

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

2. *SUBSEQUENT PROCEDURE*

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

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

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

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

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

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

[1] 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).
[2] OJ L 89, 8.4.2005, p. 4.

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

C. **DUMPING**

1. *GENERAL METHODOLOGY*

1.1. NORMAL VALUE

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

1.2. EXPORT PRICE

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

1.3. COMPARISON

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

1.4. DUMPING MARGIN FOR THE PRC

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

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

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

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

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

2. *PEOPLE'S REPUBLIC OF CHINA (PRC)*

2.1. MET

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

2.2. IT

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

2.3. NORMAL VALUE

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

(a) **Analogue country**

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

(b) **Determination of normal value**

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

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

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

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

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

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

2.4. EXPORT PRICES

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

2.5. COMPARISON

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

2.6. DUMPING MARGIN

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

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

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

2.6.2. ***For all other exporting producers***

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

All other companies	42,6 %

3. *THE UNITED STATES OF AMERICA*

3.1. NORMAL VALUE

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

3.2. EXPORT PRICE

(29) One exporting producer contested the fact that the SG & A expenses and the profit realised by its related importers in the Community were deducted in their entirety from the resale prices in order to arrive at a reliable export price. Rather it claimed that such deductions should be allocated over the activities of the company both in the USA and in the Community.

(30) In this respect, it is recalled that, pursuant to Article 2(9) of the basic Regulation, all costs, including the SG & A incurred between importation and resale of the related importer, plus a reasonable profit have to be deducted. The deductions have been calculated on the basis of actual verified data of the importer. Since the costs which the exporter wanted to allocate to the USA activities were indeed incurred in the Community, the claim had to be rejected.

3.3. COMPARISON

(31) One exporting producer claimed that the Commission wrongly compared bulk ex-factory product for export with finished domestic retail product.

(32) In this respect it is noted that from the initiation of the proceeding, a comparison has been made between the bulk product sold on the domestic market in the USA and the bulk product imported into the Community, even if the latter was presented as a finished product, such as tablets, when sold to the first independent customer in the Community. This approach was based on the observation that TCCA is mainly imported in bulk form into the Community and re-worked in the Community.

(33) However, it is recognised that while making this comparison some necessary adjustments with regard to the finishing of the product were not made at the provisional stage. Therefore, normal value was adjusted by eliminating from the cost of production in the USA the part that corresponds to the finishing of the product sold on the USA domestic market. The manufacturing costs of the department of the USA exporting producer where this activity took place were eliminated from the normal value, in accordance with the deduction from the resale price in the Community of the costs linked to the same activity, typically performed by third party subcontractors or tollers.

(34) It was further claimed that the above described 'bulk approach' would also require the exclusion of overheads (SG & A expenses) in the determination of normal value on the domestic market, because allegedly those overheads are mainly made to market the finished product.

(35) In this respect it is noted that the activity of the group, which in the USA consists of the exporting producer and its mother company, and the costs made at that level with regard to TCCA, contribute to the marketing of both the bulk product and its different presentations to the first independent customer. The finished product is nothing more than the bulk product in a specific presentation. Claiming that the overheads do not play a role in the marketing of the bulk production would imply that it would be possible to continue the profitable production of bulk product without interference of the company and group structure, and more specifically its sales organisation. However, in reality the marketing does not distinguish between bulk or finished product but serves the marketing of TCCA in all its presentations. The claim was therefore rejected.

(36) In all other respects and in the absence of further comments, the provisional findings concerning the comparison of normal value to export price as set out in recital 94 of the provisional Regulation are confirmed.

3.4. DUMPING MARGIN

(37) In accordance with Article 2(11) of the basic Regulation, the comparison of the weighted average normal value of each product type concerned exported to the Community to the weighted average export price of each corresponding type of the product concerned, taking into account the level of trade, showed the existence of dumping in respect of the cooperating exporting producers.

(38) The definitive dumping margins expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

BioLab Inc.: 50,4 %

Clearon Inc.: 105,3 %

(39) The residual definitive margin was established at the highest dumping margin found on the basis of the highest dumped and representative product type for one of the cooperating exporting producers.

Residual dumping margin: 120 %

D. **INJURY**

1. *COMMUNITY PRODUCTION*

(40) In the absence of any new information submitted, the findings set out in recitals 97 and 98 of the provisional Regulation are hereby confirmed.

2. *DEFINITION OF THE COMMUNITY INDUSTRY*

(41) One processor located in the Community argued that it should be considered as a Community producer because it produces blended tablets of TCCA which are covered by the definition of the product concerned. The investigation however showed that this processor did neither produce itself TCCA in granular or powder form, nor even tablets of TCCA or preparations, but rather subcontracted the production of these tablets. Moreover, the production of these tablets does not entail the production of TCCA but rather a transformation of TCCA from one form (granular or powder TCCA) in another (tablets of TCCA). On this basis, the claim could not be taken into account.

(42) Contradictory claims were received as to the treatment of the data provided by one of the European producers not included in the definition of the Community industry. The above processor claimed that the data of this producer should have been part of the Community industry while an exporting producer affirmed the contrary.

(43) In this respect, it should be noted that the data available for this producer were not used in the assessment of the situation of the Community industry, given that, as mentioned in recital 97 of the provisional Regulation, the said producer did not fully cooperate in the investigation and consequently could not be included in the definition of the Community industry. There was therefore no reason to consider its data in the analysis of the situation of the Community industry.

(44) Four Chinese cooperating exporting producers alleged that if there are more than two Community producers, like in the present case, the complaint cannot be supported by only one of them. It must be noted, however, that the degree of support for a complaint does not depend on the number of companies supporting the complaint, but is expressed in terms of production volume, pursuant to Article 4(1) and 5(4) of the basic Regulation. Moreover, it is recalled that as mentioned in recital 97 of the provisional Regulation, two out of the three Community producers supported the complaint. These two producers represented more than 50 % of total Community production so that conditions for initiation were met. Furthermore, it is noted that in this case, the complainant Community producer, who fully cooperated in the investigations, represented more than 50 % of the total Community production of TCCA during the IPs. The claim was therefore rejected.

(45) It should be mentioned that since the imposition of the provisional measures, Aragonesas Delsa, the Community producer which was deemed to constitute the Community industry, has been acquired by the group Ercros. One American cooperating exporter alleged that the conditions for qualification as Community industry might not be met anymore, given that according to this exporter, Ercros also owns Inquide, allegedly an important importer of Chinese TCCA.

(46) In this respect, it should be first noted that Inquide is part of the Neokem group, which is one of the other European producers which did not fully cooperate in the investigation. Contrary to what is alleged by the American exporter, Ercros does not own Inquide fully but only owns a minor share in Inquide. Therefore, contrary to what is claimed by this exporter, Inquide and Aragonesas Delsa have not merged and there are no direct financial links between them. The investigation also confirmed that the Community producer was neither participating in dumping practices, nor shielded from the injurious effects of dumping. Therefore, there were no reasons to put into question its qualification as Community industry. Consequently, the conclusion drawn in recital 99 of the provisional Regulation is confirmed.

(47) In the absence of any other comments, the definition of the Community industry as set out in recital 99 of the provisional Regulation is hereby confirmed.

3. *COMMUNITY CONSUMPTION*

(48) In the absence of any new information, the calculation of Community consumption as set out in recitals 100 to 105 of the provisional Regulation is hereby confirmed.

4. *IMPORTS INTO THE COMMUNITY FROM THE COUNTRIES CONCERNED*

4.1. CUMULATIVE ASSESSMENT OF THE EFFECTS OF THE DUMPED IMPORTS CONCERNED — MARKET SHARES OF DUMPED IMPORTS

(49) One exporting producer argued that the cumulative assessment of the imports from the PRC and the imports from the USA was not warranted since the conditions of competition between the Chinese and the American imports in terms of import volume, market share and price behaviour were fundamentally different.

(50) It is first recalled that the three conditions set by Article 3(4) of the basic Regulation have been assessed under recital 107 of the provisional Regulation.

(51) Moreover, before deciding on the cumulation of the imports from the USA and the PRC, the actual situation of import volumes, market share and prices of the imports concerned has been analysed separately for both countries in recitals 109 to 112 of the provisional Regulation.

(52) As regards the conditions of competition, it should be recalled that as set out in recital 24 of the provisional Regulation, TCCA produced in the PRC and the USA, and TCCA produced and sold by the Community producers on the Community market have the same basic physical and chemical characteristics and are interchangeable for Community customers. In addition, it was found that exporting producers in the countries concerned and producers in the Community all use similar sales channels. Moreover, the imports from the PRC and the USA both showed the same price trends. The fact that imports from two different countries do not entirely follow the same trend, in terms of volume and market share, can stem from various reasons and does not necessarily imply that they are not sold under similar conditions of competition.

(53) On the basis of the above, and in the absence of any further comments with respect to the cumulative assessment of the effects of the dumped imports concerned, the findings as set out in recitals 106 to 108 of the provisional Regulation are hereby confirmed.

4.2. PRICES OF IMPORTS AND UNDERCUTTING

(54) Following corrections made in the dumping calculations, the price undercutting has also been revised.

(55) During the IP, the weighted average price undercutting margins for the PRC, expressed as a percentage of the Community industry's sales prices, ranged from 33,8 % to 44,2 % for the Chinese exporters. The weighted average price-undercutting margin was 39,7 %.

(56) During the IP, undercutting for the USA was also found to exist. Whilst one exporting producer undercut only certain types of TCCA, the other cooperating exporting producer was found to significantly undercut the Community industry's prices. The weighted average price-undercutting margin was 0,69 %. It is also noteworthy that the Community industry prices were depressed.

5. *SITUATION OF THE COMMUNITY INDUSTRY*

(57) It is recalled that in recital 135 of the provisional Regulation, that the Commission provisionally concluded that the Community industry had suffered material injury within the meaning of Article 3 of the basic Regulation.

(58) Four Chinese exporters claimed that in most anti-dumping investigations, material injury was established when the Community industry is making losses while in this particular case, the Community industry is still profitable.

(59) However, it is recalled that a loss-making situation is not a prerequisite for the determination of material injury. In accordance with Article 3(5) of the basic Regulation which states that the examination of the impact of the dumped imports on the Community industry shall include an evaluation of, *inter alia*, the 'actual and potential decline in […] profits', the profitability analysis has to be seen by comparison to the profit realised in the absence of dumping. In this particular case, it is recalled that the Community industry has lost 50 % of the profit it reached in 2000, namely before the dumped imports entered the Community market. Moreover, it is recalled that the Community industry suffered also from negative developments in respect of prices and market shares.

(60) On the basis of the above, and in the absence of any other comments in addition to the above, the findings in respect of the situation for the Community industry, as set out in recitals 117 to 135 of the provisional Regulation, are hereby confirmed.

6. *CONCLUSION*

(61) In view of the above, it is concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

E. **CAUSATION**

1. *EFFECT OF THE DUMPED IMPORTS*

(62) In the absence of any new information submitted, the conclusions set out in recitals 136 to 141 of the provisional Regulation are hereby confirmed.

2. *EFFECT OF OTHER FACTORS*

Production capacity

(63) One exporting producer alleged that the Community industry did not have the technical ability to participate in market growth because of technical problems linked to the start-up of a new factory, and was not prevented from doing so by the dumped imports as alleged in recital 118 of the provisional Regulation.

(64) As mentioned in recital 118 of the provisional Regulation, the Community industry decided in 2001/2002 to set up a new factory which started production in mid-2003 when the old plant was shut down. Although it is true that the Community industry encountered some technical difficulties to use fully the capacity of its new factory, it should be noted that the designed capacity, which the exporting producer is referring to in its submission, does not match with the data taken into consideration in the provisional Regulation. The capacity figures mentioned in the provisional Regulation referred to an actual capacity, i.e. a capacity adjusted to take into consideration these difficulties instead of the nameplate capacity. Therefore, the effect of the technical difficulties on the decreasing trend of capacity utilisation had already been partially taken into account. However, on the basis of the findings of the investigation, a further correction of the capacity figures used in the provisional Regulation would appear to be appropriate because the consequences of the abovementioned technical difficulties were not fully reflected in the capacity figures. Consequently, the actual capacity utilisation during the IPs would be near to 100 %. Indeed, it was found that the Community industry was operating at full capacity and had to temporary purchase the product concerned in order to meet the demand. Therefore, it cannot be excluded that the temporary technical difficulties of the Community industry to produce have contributed to some extent to the injury suffered by the Community industry.

Effect of investments

(65) One exporting producer argued that the Commission failed to consider the negative impact on profitability of the major investments made by the Community industry and the additional costs due to the technical problems it had to face in the start-up phase.

(66) It is recalled that the issue of the new investment of the Community industry has already been dealt with in recital 150 to 152 of the provisional Regulation.

(67) Moreover, as stated in recital 129 of the provisional Regulation, the new factory permitted the Community industry to reduce both fixed and variable costs, to produce more efficiently and to reach better productivity levels. Therefore, as mentioned in recital 125 of the provisional Regulation, any additional cost of the new investment has been compensated by parallel cost reductions and better efficiency. Indeed, the cost of production which first increased between 2000 and 2001, subsequently decreased until the IPs when a gain in productivity could be reached. It is also noteworthy that any effect of the new factory on the depreciation costs started only in July 2003, i.e. when the new factory started to produce and when the old factory definitely stopped. It can therefore not explain the decreasing trend in profitability which already started in 2001; profitability decreased by more than 20 % between 2000 and 2002 and even by more than 40 % between 2001 and 2002. The argument was therefore rejected.

Maturation of the TCCA market

(68) One processor challenged the conclusion of recital 149 of the provisional Regulation and reiterated its claim that price decreases were normal and were to be expected due to the maturation of the TCCA market.

(69) Although a price decrease can be expected when a product reaches a certain maturation, it should however be stressed that while maturation is rather commonly understood as a smooth, continuous and regular process which takes place over several years, the price decrease of the imports concerned was on the contrary, sudden and significant, since prices dropped by an average of 15 % per year between 2000 and 2003, even though the demand during the summer time in this period was particularly high.

(70) Moreover, according to the claim mentioned above, the injury suffered by the Community industry in terms of prices would have been caused by the normal evolution of the Community market which became mature over the period considered. This would mean that the decrease of 8 % of the Community industry prices between 2000 and the IP-PRC, or 12 % between 2000 and the IP-USA would correspond to the 'normal' evolution of the prices on the Community market in view of the life cycle of the product. However, it is recalled that prices of the imports concerned decreased by 40 % between 2000 and the IPs, which is obviously much more than an expected 'normal' price decrease which would be merely due to the maturation of the market. Therefore, even if the maturation of the market might have contributed to a limited extent to the price evolution, it can certainly not explain the significant price decrease of the imports concerned between 2000 and the IPs nor the injury suffered thereof by the Community industry.

Exports of the Community industry

(71) Four cooperating Chinese exporters claimed that some figures regarding the exports of the Community industry were missing in the injury analysis so that it is not possible to establish the full picture of the Community industry situation.

(72) Regarding profitability, one exporting producer argued that the Commission has not taken into consideration the negative impact of the Community industry's exports of TCCA to the USA. It is recalled that the injury investigation focuses on the situation of the Community industry on the Community market. Consequently, the profitability figures mentioned in recital 125 of the provisional Regulation only concern the sales made on the Community market and are therefore not influenced by any alleged loss made on the USA or on any other export market.

(73) Some parties alleged that any negative trends in the Community industry's market share and profitability were largely due to the Community industry's exports outside the Community market. According to them, if the Community industry's exports had been sold in the EC market instead of being exported to the USA market, the Community industry would have been able to meet the demand on the EC market, to keep its market share and to sell at a better price.

(74) The investigation showed that the exports of the Community industry continuously increased since 2000 and represented more than 50 % of its total sales of the product concerned during the IPs, compared to less than 45 % in the year 2000.

(75) In this respect, it should first of all be noted that the Community industry's market strategy is not to meet the demand on the Community market whatever the price is, but to sell a maximum on this market at an acceptable price.

(76) Secondly, the prices of exports to the USA do not as such point to injury because they are not comparable to those on the Community market. Indeed, it was found that any link made between the exports sales and the situation of the Community industry is not relevant because the exports sales and the sales made on the Community market are not comparable in terms of product mix and thus in terms of price.

(77) Sales made on the export market are mainly sales of granules in big bags whose price is much lower than the product sold on the Community market, i.e. mainly tablets. A simple price comparison of the unadjusted figures is therefore inconclusive.

(78) Thirdly, it should be noted that more than 80 % of the sales on the Community market take place between February and August, while the sales period on the American market is longer, particularly in the sunbelt area. Therefore, the sales to the USA in excess of what the Community market could absorb at an acceptable price allowed the Community industry to achieve improved economies of scale and to maintain the price level on the Community market.

(79) Fourthly, it should be noted that the USA market is the first market in the world for swimming pool equipment and chemicals. It was therefore vital for the Community industry to have access to this important market and maintain its position there, in order to diversify its customers and also to take part in the development of the most active market.

(80) Finally, no evidence was provided showing that these sales on the American market could have been replaced by sales on the Community market at the same period of time and at better price, thus causing self inflicted injury.

(81) On the basis of the above, the claims were rejected and in the absence of any further comments, the conclusions drawn in respect of the effect of other factors in recitals 142 to 154 of the provisional Regulation are hereby confirmed.

3. *CONCLUSION ON CAUSATION*

(82) Based on the above considerations and other elements contained in recitals 136 to 154 of the provisional Regulation, it is concluded that imports from the PRC and the USA have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

F. **COMMUNITY INTEREST**

1. *INTEREST OF THE COMMUNITY INDUSTRY*

(83) In the absence of any comments made with respect to the interest of the Community industry, the findings as set out in recital 160 of the provisional Regulation are hereby confirmed.

2. *INTEREST OF UNRELATED IMPORTERS*

(84) It should be recalled that the cooperation of unrelated importers was very low as already mentioned in recital 162 of the provisional Regulation. Furthermore, no importers made any comments after disclosure of the provisional findings.

(85) Under these circumstances, and in the absence of any further information submitted or available in respect of the interest of the unrelated importers, the findings as set out in recitals 161 and 162 of the provisional Regulation are hereby confirmed.

3. *INTEREST OF PROCESSORS*

(86) The further investigation showed that the situation of the processors can vary a lot in terms of profitability and in terms of impact of TCCA on their cost of production. Therefore, the assumption made in recital 168 of the provisional Regulation that TCCA represents more than 40 % of the processor's cost of production and that it is a low margin product needs to be refined. Indeed, an additional on-the-spot verification carried out at the premises of one of the most important processor on the EC market, showed that the product concerned represented less than 25 % of its total cost of production and that its profitability was above 8 %.

(87) One processor challenged the assessment of the provisional Regulation that the processors could revise their price upward, and thus pass part of the cost increase to their customers so that the effect of the measures would be diluted through the distribution chain.

(88) This scenario was however confirmed by at least another processor, which clearly stated that since the provisional duties have been imposed, processors have increased their prices between 15 and 25 % (or on average EUR 0,32/kg) for the 2005 season. This was also confirmed by another processor. The investigation also showed that the processors are not contractually prevented from increasing their prices and that special clauses have also been inserted in their contracts for the 2006 season in view of the possible imposition of anti-dumping duties. These elements clearly show that the processors have already, at least partially, taken some precautions to pass on the cost increase to the distribution chain.

(89) Finally, the investigation showed that the mark-up added by the mass merchants on their purchase price from the processors can be significant, i.e. above 40 %, which confirms that there is room for passing on the cost increase caused by the duties to the distribution chain.

(90) One processor claimed that the imposition of one single duty on imports of TCCA in the form of both granules and tablets would drive exporting producers and intermediaries to import tablets directly and would negatively affect the processing activity. It was therefore suggested that a higher duty be imposed on imports of tablets than on imports of TCCA in granules. According to this processor, such distinction would allow to protect both the Community industry and the processors.

(91) However, it is recalled that the product concerned was defined as TCCA and preparations thereof. It can be in the form of granules, powder or tablets, with no limit of chlorine content. Therefore, although the comparisons were made between products having identical characteristics, such as the form or the packaging, the resulting duty applied on the product concerned should apply on imports of TCCA, whatever the form, i.e. granules, powder or tablets. Any other approach would consist in using the anti-dumping duties to make up for the difference in processing costs between the European processors and the Chinese exporters, which is obviously not the purpose of anti-dumping measures. Finally, it is noted that, although the same *ad valorem* duty applies to both TCCA in granules and tablets of TCCA, it will necessarily result in a higher amount of duties to be paid when applied on more expensive products, such as tablets. This could partially satisfy the request made by this processor. The claim was therefore rejected.

(92) On the basis of the above, and in the absence of any other comments made with respect to the interest of the Community processors, the findings as set out in recitals 163 to 172 of the provisional Regulation are hereby confirmed.

4. *INTEREST OF CONSUMERS*

(93) One processor reiterated its claim that any price increase will not be in the consumers' interest. However, as explained in the provisional Regulation, any price increase is likely to be minor and thus not to affect the consumer's choice. This has been confirmed by one processor who even stated that the impact on the final consumer would be around EUR 10 per year, which is even less then the conservative estimate of EUR 2,5 per month mentioned in the provisional Regulation. Such a cost increase cannot be considered as significant or of a nature as to lead the final consumer to switch to alternative products.

(94) In addition, the estimated amount of EUR 10 per year only reflects the hypothetical maximum impact of the measures if the entire duty were to be passed on to the final consumer. It also does not take into account the fact that the definitive measures are at least for the imports originating in the USA lower than those provisionally imposed.

(95) On the basis of the above, and in the absence of any other comments made with respect to the interest of the Community consumers, the findings as set out in recitals 173 to 177 of the provisional Regulation are hereby confirmed.

5. *CONCLUSION ON COMMUNITY INTEREST*

(96) In view of the conclusions drawn in the provisional Regulation, and taking into account the submissions made by the various parties, it is concluded that there are no compelling reasons not to impose definitive anti-dumping measures against dumped imports of TCCA originating in the countries concerned.

G. **DEFINITIVE ANTI-DUMPING MEASURES**

(97) Based on the methodology explained in recitals 179 to 183 of the provisional Regulation, an injury elimination level was calculated for the purposes of establishing the level of measures to be imposed.

(98) When calculating the injury margin in the provisional Regulation, the target profit for the Community industry was set at 10 %, a level deemed conservative and which could be reasonably expected in the absence of injurious dumping.

(99) Several interested parties argued that a 10 % profit is inappropriate for the TCCA business and that the profit should rather be below 5 %. However, as mentioned in recital 181 of the provisional Regulation, the profit level of the Community industry before the imports concerned into the Community started to significantly increase. Indeed, the level reached in 2000 and 2001, shows that a 10 % profit can reasonably be expected in the absence of dumping. The claims were therefore rejected.

(100) In the absence of any new comments on this subject, the methodology set out in recitals 179 to 183 of the provisional Regulation is hereby confirmed.

1. *DEFINITIVE MEASURES*

(101) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margin calculated as regards imports originating in the PRC and at the level of the injury margin calculated as regards imports originating in the USA.

(102) On the basis of the above, since the injury margins were in all cases higher than the dumping margins with regard to the PRC and lower than the dumping margins with regard to the USA, the definitive duties should be as follows:

Country	Company	Anti-dumping duty rate
PRC	Hebei Jiheng Chemical Co. Limited	8,1 %
	Puyang Cleanway Chemicals Limited	7,3 %
	Heze Huayi Chemical Co. Limited	14,1 %
	Zhucheng Taisheng Chemical Co. Limited	40,5 %
	All other companies	42,6 %
USA	Biolab Inc.	7,4 %
	Clearon Inc.	8,1 %
	All other companies	25,0 %

(103) The individual anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these 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 specifically mentioned. Imported products produced by any other company not specifically mentioned by its name and address in the operative part of this Regulation, 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'.

(104) Any claim requesting the application of these individual 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 ([1]) forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, 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.

([1]) European Commission, Directorate-General for Trade, Direction B, Office J-79 5/16, B-1049 Brussels.

(105) In order to minimise the risks of circumvention due to the high difference in the amounts of duties, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include:

(106) The presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Only imports accompanied by such an invoice shall be declared under the applicable TARIC additional codes of the producer in question. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(107) The companies concerned have also been invited to submit regular reports to the Commission in order to ensure a proper follow-up of their sales of the product concerned to the Community. Should the reports not be submitted, or should the analysis of the reports show that the measures are not adequate to eliminate the effects of injurious dumping, the Commission may initiate an interim review pursuant to Article 11(3) of the basic Regulation. This review may, *inter alia*, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty.

2. *COLLECTION OF PROVISIONAL DUTIES*

(108) In view of the magnitude of the dumping margins found and in the light of the level of the material injury caused to the Community Industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by Regulation (EC) No 538/2005, should be collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected. The amounts secured in excess of the definitive rate of anti-dumping duties should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 definitive anti-dumping duty applicable before duty, to the net free-at-Community-frontier price for products manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty rate	TARIC additional Code
PRC	Hebei Jiheng Chemical Co. Limited	8,1 %	A604
	Puyang Cleanway Chemicals Limited	7,3 %	A628
	Heze Huayi Chemical Co. Limited	14,1 %	A629
	Zhucheng Taisheng Chemical Co. Limited	40,5 %	A627
	All other companies	42,6 %	A999
USA	Biolab Inc.	7,4 %	A594
	Clearon Inc.	8,1 %	A596
	All other companies	25,0 %	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Amounts secured by way of provisional anti-dumping duty pursuant to Commission Regulation (EC) No 538/2005 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 shall be definitely collected at the rate definitively imposed by the present Regulation. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

Article 3

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

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

Done at Luxembourg, 3 October 2005.

For the Council
The President
D. ALEXANDER

ANNEX

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an official of the company, in the following format:

1. The name and function of the official of the company which has issued the commercial invoice.

2. The following declaration: 'I, the undersigned, certify that the (volume) of trichloroisocyanuric acid sold for export to the European Community covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

Date and signature.