COMMISSION IMPLEMENTING REGULATION (EU) 2022/619

of 12 April 2022

terminating the 'new exporter' reviews of Implementing Regulation (EU) 2017/2230 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China, for three Chinese exporting producers, imposing the duty with regard to these producers' imports and terminating the registration of these imports

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('the basic Regulation'), and in particular Article 11(4) thereof,

Whereas:

1. MEASURES IN FORCE

(1) In October 2005, the Council imposed, by means of Regulation (EC) No 1631/2005 ([2]) a definitive anti-dumping duty ('the original Regulation') on imports of trichloroisocyanuric acid ('TCCA') originating in the People's Republic of China ('the PRC') and the United States of America ('USA'). The anti-dumping duties against imports from the PRC ranged from 7,3 % to 40,5 % for individual companies whilst the country-wide duty was set at 42,6 %.

(2) By Implementing Regulation (EU) No 855/2010 ([3]), the Council lowered the anti-dumping duty rate for one exporting producer from 14,1 % to 3,2 %.

(3) Following an expiry review, the Council imposed definitive anti-dumping measures consisting of individual duties ranging from 3,2 % to 40,5 % with a residual duty of 42,6 % on imports of TCCA originating in the PRC by Council Implementing Regulation (EU) No 1389/2011 ([4]).

(4) By Implementing Regulation (EU) No 569/2014 ([5]), the Commission imposed an anti-dumping duty rate of 32,8 % for a new exporting producer. For another exporting producer, the Commission terminated the investigation by Commission Implementing Regulation (EU) 2015/392 ([6]).

(5) Following a second expiry review, pursuant to Article 11(2) of the basic Regulation, the Commission imposed definitive anti-dumping measures consisting of individual duties ranging from 3,2 % to 40,5 % with a residual duty of 42,6 % on imports of TCCA originating in the PRC by Commission Implementing Regulation (EU) 2017/2230 ([7]).

2. CURRENT INVESTIGATION

2.1. Requests for a review

(6) The Commission received three requests for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The requests were lodged by Hebei Xingfei Chemical Co., Ltd (Hebei Xingfei) on 13 July 2020, by Inner Mongolia Likang Bio-Tech Co., Ltd (Mongolia Likang) on 29 July 2019 and updated on 12 February 2021, and by Shandong Lantian Disinfection Technology Co., Ltd (Shandong Lantian) on 13 April 2021 ('the applicants') whose exports to the Union are subject to a definitive anti-dumping duty of 42,6 %.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ L 261, 7.10.2005, p. 1.
([3]) OJ L 254, 29.9.2010, p. 1.
([4]) OJ L 346, 30.12.2011, p. 6.
([5]) OJ L 157, 27.5.2014, p. 80.
([6]) OJ L 65, 10.3.2015, p. 18.
([7]) OJ L 319, 5.12.2017, p. 10.

(7) The applicants claimed that they did not export the TCCA to the Union during the period of investigation of the original investigation, i.e. from 1 April 2003 to 31 March 2004 ('IP').

(8) The applicants also claimed that they were not related to any of the exporting producers of TCCA, which are subject to the measures in force. Finally, the applicants claimed that they had exported TCCA to the Union after the end of the investigation period of the original investigation.

2.2. **Initiation of the new exporter reviews**

(9) The Commission examined the evidence available and concluded that there was sufficient evidence to justify the initiation of 'new exporter' reviews pursuant to Article 11(4) of the basic Regulation. After the Union producers had been given an opportunity to comment, the Commission initiated, by Commission Implementing Regulation (EU) 2021/1209 ([8]), three reviews of Implementing Regulation (EU) 2017/2230 with regard to the applicants.

2.3. **Product concerned**

(10) The product under review is trichloroisocyanuric acid and preparations thereof, also referred to as 'symclosene' under the international non-proprietary name (INN), currently falling under CN codes ex 2933 69 80 and ex 3808 94 20 (TARIC codes 2933 69 80 70 and 3808 94 20 20) and originating in the PRC ('the product concerned' or 'TCCA').

(11) TCCA is a chemical product used as a broad-spectrum organic chlorine disinfectant and bleacher, in particular for disinfecting water in swimming pools and spas. Other uses include water treatment in septic tanks or cooling towers and cleansing of kitchen appliances. TCCA is sold in the form of powder, granules, tablets or chips. All forms of TCCA and preparations thereof share the same basic characteristics (disinfectant) and are therefore considered as a single product.

2.4. **Parties concerned**

(12) The Commission officially advised the applicants, the Union industry as well as the representatives of the exporting country, of the initiation of the reviews. Interested parties were given the opportunity to make their views known in writing and to be heard.

(13) The Commission sent questionnaires to the three applicants. The questionnaires had also been made available online on the day of initiation.

(14) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation. The Commission instead crosschecked remotely all the information deemed necessary for its determinations in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ([9]). The Commission carried out remote crosschecks ('RCC's') with the three applicants and with a company in the analogue country:

Applicants

— Hebei Xingfei Chemical Co., Ltd

— Shandong Lantian Disinfection Technology Co., Ltd

— Mongolia Likang Bio-Tech Co., Ltd

Analogue country

— Company 'A', Japan.

([8]) OJ L 263, 23.7.2021, p. 1

([9]) Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

2.5. **Review investigation Period**

(15) The investigation covered the period from 1 January 2019 to 30 June 2021 ('review investigation period').

2.6. **Disclosure**

(16) On 25 February 2022 the Commission disclosed to interested parties its intention to terminate the review investigations without determining individual dumping margins for the applicants. Interested parties were given the opportunity to comment.

(17) Following the disclosure, the applicants claimed that their rights of defence were infringed due to an inadequate disclosure. Specifically, the applicants argued that the Commission failed to disclose information concerning the normal value, which would allow the applicants to provide further comments to the Commission's decision.

(18) The Commission recalled that, according to Article 20(2) of the basic Regulation, the Commission should disclose the essential facts and considerations on the basis of which it intends to take a decision. Given the findings of the investigations, information concerning the normal value was not an element on which the Commission had based its findings. Accordingly, disclosure of such information was not necessary to allow the applicants to exercise their procedural rights. The claims were therefore rejected.

2.7. **Hearings**

(19) Following disclosure the applicants requested and were granted a hearing with the Commission services. In addition, the applicants requested a hearing with the Hearing Officer that was held on 11 March 2022. The hearing officer found that the applicants' procedural rights had been fully respected.

3. **RESULTS OF THE INVESTIGATION**

3.1. **'New exporting producer' criteria**

(20) Pursuant to Article 11(4) of the basic Regulation, the criteria to be met for a new exporting producer are the following:

(a) it did not export to the Union the product concerned during the period of investigation on which the measures are based;

(b) it is not related to any of the exporters or producers in the PRC which are subject to the anti-dumping measures in force; and

(c) it has actually exported to the Union the product concerned after the original investigation period or has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

(21) The investigation confirmed that the three applicants had not exported the product concerned during the original investigation period and that they had started to export to the Union after that period.

(22) The investigation also confirmed that the applicants were not related to any of the Chinese exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

(23) With regard to the criterion that the applicants had started exporting to the Union after the original investigation period, given that each applicant only had one single export transaction of a limited volume during the review investigation period ('RIP'), the Commission examined whether that export transaction could be deemed sufficient to provide an accurate reflection of the applicants' current and future export behaviour. Specifically, the Commission further analysed, for each applicant: the share of the exported quantity in relation to total exports and production; the sales prices to the EU in relation to its export prices to third countries; and, the sales prices to the EU in relation to the average prices of other Chinese exporting producers who exported significant volumes to the EU during the RIP.

3.1.1. *Hebei Xingfei Chemical Co., Ltd.*

(24) For Hebei Xingfei the investigation found that during the investigation period, only one sales transaction to the EU was recorded, for a volume of 9 tonnes. This transaction represented, during the same period, 0,09 % of the total company production volume and 0,63 % of its total export volume.

(25) As to prices, the investigation demonstrated that, for the grades of TCCA exported to the EU, the export price for the only transaction was 115 % to 140 % higher than Hebei Xingfei's average export price to non-EU countries during the RIP.

(26) The Commission also compared the export prices to the EU between Hebei Xingfei and other Chinese exporting producers supplying the specific EU market ([10]) during the RIP. It was found that the price of Hebei Xingfei's transaction at CIF level was 53 % higher than the average price of the other Chinese exports. After the addition of the applicable anti-dumping duty, the price of Hebei Xingfei's transaction was 105 % higher.

(27) For the above reasons, the sole export sales transaction of Hebei Xingfei to the EU during the RIP did was not considered sufficiently representative to provide an accurate reflection of Hebei Xingfei's current and future export behaviour.

3.1.2. *Shandong Lantian Disinfection Technology Co., Ltd.*

(28) For Shandong Lantian the investigation found that during the investigation period, only one sales transaction to the EU was recorded, for a volume of 29 tonnes. This transaction represented, during the same period, 0,07 % of the total company production volume and 0,02 % of its total export volume.

(29) As to prices, the investigation revealed that, for the grades of TCCA sold to the EU, the export price for the only transaction was 60 % to 86 % higher than Shandong Lantian's average export price to non-EU countries during the RIP.

(30) The Commission also compared the export prices to the EU between Shandong Lantian and other Chinese exporting producers supplying the specific EU market during the RIP. It was found that the price of Shandong Lantian's transaction at CIF level was 43 % higher than the average price of the other Chinese exports. After the addition of the applicable anti-dumping duties, the price of Shandong Lantian's transaction was 87 % higher.

(31) For the above reasons, the sole export transaction of Shandong Lantian to the EU during the RIP, was not considered sufficiently representative to provide an accurate reflection of Shandong Lantian's current and future export behaviour.

3.1.3. *Inner Mongolia Likang Bio-Tech Co., Ltd.*

(32) For Mongolia Likang the investigation found that during the investigation period, only one sales transaction to the EU was recorded, for a volume of 9 tonnes. This transaction represented, during the same period, 0,10 % of the total company productions volume and 0,71 % of its total export volume.

(33) As to prices, the investigation showed that, for the grades of TCCA sold to the EU, the export price for the only transaction was around 50 % higher than Mongolia Likang's average export prices to non-EU countries during the RIP.

(34) The Commission also compared the export prices to the EU between Mongolia Likang and other Chinese exporting producers supplying the specific EU market during the RIP. It found that the price of Mongolia Likang's transaction at CIF level was 11 % higher than the average price of the other Chinese exports. After the addition of the applicable anti-dumping duties, the price of Mongolia Likang's transaction was 48 % higher.

([10]) The 'specific EU market' refers to the Member State where the applicant exported the product concerned and where the customer was based. Price comparison between the applicant and other Chinese exporting producers was based on the information contained in Art. 14(6) database, concerning imports at member state level.

(35) For the above reasons, the sole export sales transaction of Mongolia Likang to the EU during the RIP, was not considered sufficiently representative to provide an accurate reflection of Mongolia Likang's current and future export behaviour.

3.2. **Conclusion**

(36) During the investigation, in response to inquiries by the Commission of why prices varied between export markets, the applicants pointed to differences in packaging, quality and a higher price premium they were able to obtain on the Union market. However, packaging and quality differences were accounted for by the product control number assigned to the products when compared to other export destinations. Moreover, comparisons with exports of other Chinese producers during the RIP demonstrated that the Union market did not attract a premium that was able to explain the observed price difference.

(37) Following disclosure, the applicants claimed that the Commission's findings were without legal basis as they were based on an assessment of representativity of the transactions that is not provided for in Article 11(4) of the basic Regulation. Furthermore, the applicants claimed that the Commission's assessment with regard to transactions' representativeness was inconsistent with WTO case law. They referred to DS295 *Mexico – Antidumping Measures on Rice*, in which the establishment of an additional requirement for the initiation of a review, i.e. a representative volume, was found inconsistent with Article 9.5 of the ADA. The same claim was submitted by a Union importer.

(38) The Commission considered that the WTO Appellate Body's findings in DS295 were not strictly relevant for the case at hand. This finding concerned different circumstances, notably whether a legal provision in the Mexican domestic law limiting the possibility to initiate a new exporter review by requiring the existence of minimum representative volumes was consistent with the antidumping agreement (ADA). In the case at hand, no such criterion had been applied by the Commission in order to decide to open the current exporter reviews.

(39) Furthermore, with regards to the investigation stage, the Commission recalled that its decision to terminate the reviews was not based on a lack of representative volumes but on an assessment of whether the applicants' export price, given the low volumes in only one sales transaction for each of the applicants, were sufficient to provide an accurate reflection of the exporters' current and future export behaviour. As recalled in recital (23), each exporter only had a single export transaction throughout the RIP, and this caused the Commission to perform an in-depth analysis concerning the appropriateness of the price of that single export transaction. This is because, in contrast to an original investigation pursuant to Article 5 of the Basic Regulation, in the context of a review investigation, and in particular in the context of a new exporter review, it is the exporter that requests the review to be initiated on the basis of transactions which it is aware will normally be used as a basis for the dumping margin calculation. Moreover, the Commission recalls that it is obliged to ensure the effectiveness of the duties in force in order to not frustrate the objective of the Basic Regulation to provide relief to the Union industry by offsetting the injurious effects of imports that had found to be dumped during the original investigation period. On that basis, the presence of only a single transaction during the RIP in the context of a review investigation requires additional assurances that such an export price is sufficient to make a reasonably accurate finding of dumping, which would avoid the risk that the existing duties being undermined. Consequently, the Commission decided to look into and examine all the relevant evidence received from the applicants, including prices to other export markets and the explanations given for the apparent deviation with regard to EU market prices of those single transactions. As a result of that examination, for reasons that have been outlined, the Commission considered that the export prices of the three exporters' respective transactions were not appropriate to make a reasonably accurate finding of dumping. Therefore, on the basis of all the evidence collected during the investigation and in order to ensure the effectiveness of the duties in force, the Commission determined that the application of the residual duty as regards the applicants was appropriate in this case. The claims were therefore rejected.

(40) Following disclosure, the applicants further disagreed with the Commission's view that quality differences were accounted for by the so-called product control numbers, which were used in the questionnaires, and thus the applicants claimed that the price comparisons made between the applicants' export prices and other Chinese exporters' price were irrelevant.

(41) The Commission recalled that the product control numbers used in the case were the same that were used in the original investigation, as well as in all subsequent investigations concerning this product. The Commission noted that product control numbers classify the different types of product falling under the definition of the product concerned based on the different technical characteristics. This classification allows the comparison of like with like, since products are compared according to their similar distinctive characteristics. The applicants did not substantiate that the alleged quality differences were taken into consideration when prices were set and thereby affected price comparability. The claims were therefore rejected.

(42) Following disclosure, the applicants claimed that the comparison of their export prices to the EU with the average price of other Chinese exporting producers did not lead to meaningful conclusions, since 1) they are the result of a mix of export strategies, 2) the exporters are subject to different duties which may affect prices and 3) the period considered is too long and price fluctuations could distort the assessment. Furthermore, the applicants presented a set of Eurostat import data with, allegedly, average import prices of the product concerned being higher than the applicant's prices, thus claiming the existence of an EU premium price.

(43) The analysis of the import prices in the Union, however, allowed the Commission to establish a reference price level at which the product concerned was commercialised in the Union. Thus, it also allowed assessing whether the applicants export prices to the Union responded to the Union market conditions. The analysis of the import data, at TARIC level, showed that most price of other Chinese exporting producers which exported during the RIP, which may have different export strategies, nevertheless converged within a specific and limited range of prices at CIF level and even narrower after the duty being added. As mentioned above in recitals (26), (30), and (34), the prices of the applicants deviated significantly from the reference price level thus established, which were considered as commercial market prices in the Union. This deviation could not be reasonable explained. Finally, when comparing the prices in the month in which the transaction took place, the result of the analysis remained the same ([11]).

(44) Concerning the Eurostat import data provided by the applicants, the Commission noticed that these statistics were at eight-digit CN code level, and therefore, concerned a broader basket of products. In this broader basket, the product concerned represented less than 30 % in terms of volume and less than 25 % in terms of value. The assessment of the Commission was however based on data at ten-digit TARIC code level, which exclusively concerned the product concerned and therefore was a more accurate source of information. The claims were therefore rejected.

(45) In view of above reasons, the Commission considered that the transactions submitted by the applicants did not constitute a sufficiently representative basis and did not provide a sufficiently accurate reflection of their current and future export pricing behaviour that could form the basis for determining an individual dumping margin. On this basis, the review investigations should be terminated.

4. **LEVYING OF AN ANTI-DUMPING DUTY**

(46) In view of the findings outlined above, the Commission concluded that the reviews concerning imports of TCCA manufactured by the applicants and originating in the PRC should be terminated. The duty applicable to 'all other companies' pursuant to Article 1(2) of Implementing Regulation (EU) 2017/2230 should apply to products manufactured by the applicants. Consequently, the registration of the applicants' imports should cease and the country-wide duty applicable to all other companies (42,6 %), imposed by Implementing Regulation (EU) 2017/2230, should be levied on these imports from the date of initiation of these reviews. This is without prejudice to the possibilities of importers asking for a refund in accordance with Article 11(8) of the basic Regulation.

([11]) Mongolia Likang's transaction at CIF level was 18 % higher than the average price of the other Chinese exports to the EU in the month in which the transaction took place. After the addition of the applicable anti-dumping duties, the price of Mongolia Likang's transaction was 58 % higher. For Shandong Lantian prices at CIF level were 70 % higher and 126 % higher after duties. For Hebei Xingfei prices at CIF level were 78 % higher and 138 % higher after duties.

(47) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036.

HAS ADOPTED THIS REGULATION:

Article 1

1. The 'new exporter' reviews initiated by Implementing Regulation (EU) 2021/1209 are hereby terminated.

2. The anti-dumping duty applicable according to Article 1 of Implementing Regulation (EU) 2017/2230 to 'all other companies' in the People's Republic of China (TARIC additional code A999) applies to products manufactured by Hebei Xingfei Chemical Co., Ltd, Inner Mongolia Likang Bio-Tech Co., Ltd (Likang), and Shandong Lantian Disinfection Technology Co., Ltd.

Article 2

1. Article 2 of Implementing Regulation (EU) 2021/1209 is hereby repealed.

2. The anti-dumping duty applicable according to Article 1 of Implementing Regulation (EU) 2017/2230 to 'all other companies' in the People's Republic of China (TARIC additional code A999) is hereby imposed on imports identified in Article 1 of Implementing Regulation (EU) 2021/1209.

3. The anti-dumping duty referred to in paragraph 2 is hereby levied with effect from 24 July 2021 on the products which were registered pursuant to Article 3 of Implementing Regulation (EU) 2021/1209.

Article 3

1. The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Implementing Regulation (EU) 2021/1209.

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

Article 4

This Regulation shall enter into force on the day following that of 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 Brussels, 12 April 2022.

For the Commission
The President
Ursula VON DER LEYEN