COMMISSION DECISION

of 9 August 2011

terminating the anti-dumping proceeding concerning imports of tris(2-chloro-1-methyl-ethyl)phosphate originating in the People's Republic of China

(2011/498/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 23 July 2010, the European Commission (the Commission) announced, by a notice published in the *Official Journal of the European Union* [2] (the notice of initiation), the initiation of an anti-dumping proceeding pursuant to Article 5 of the basic Regulation with regard to imports into the Union of tris(2-chloro-1-methylethyl)phosphate (TCPP) originating in the People's Republic of China (the 'country concerned' or 'the PRC').

(2) The proceeding was initiated following a complaint lodged on 9 June 2010 by the European Chemical Industry Council (CEFIC) (the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Union production of TCPP. The complaint contained evidence of dumping of TCPP from the PRC and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant, other known Union producers, the exporting producers, importers and users known to be concerned as well as their associations, and the representatives of the exporting country, of the initiation of the proceeding. 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 notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(4) In view of the apparent high number of exporting producers and importers, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers and importers 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 investigation period (1 July 2009 to 30 June 2010).

(5) After examination of the information submitted, and given the high number of importers which indicated their willingness to cooperate, it was decided that sampling was necessary with regard to unrelated importers. Whereas, given the limited number of exporting producers that indicated their willingness to cooperate, it was decided that sampling was not necessary with regard to exporting producers.

(6) Six unrelated importers, accounting for 25 % of imports to the Union, agreed to be included in the sample. Two importers, accounting for around 20 % of imports from the PRC and over 80 % of imports of the importers that agreed to be included in the sample, were included in the sample. In accordance with Article 17(2) of the basic Regulation, the parties concerned were given the opportunity to comment on the selection of the sample. No objection was raised with regards to the selection of the sample.

(7) The Commission sent questionnaires to the exporting producers, sampled importers, the Union producers, to all known users in the Union, and to known analogue country producers in the United States of America (USA). Questionnaire replies were received from four exporting producers in the PRC, one analogue country producer, three Union producers, two sampled importers and 35 users in the EU. However, one of the four Chinese exporting producers supplied a highly deficient questionnaire reply, and was subsequently considered as non-cooperating.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ C 201, 23.7.2010, p. 5.

(8) 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 claim forms to the exporting producers that made themselves known within the deadlines set out in the notice of initiation. Two (groups of) companies requested MET pursuant to Article 2(7) of the basic Regulation or IT pursuant to Article 9(5) of the basic Regulation should the investigation establish that they did not meet the conditions for MET. One company claimed only IT.

(9) The Commission sought and verified the information deemed necessary for a determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

Exporting producers in the PRC

— Albemarle Chemicals (Nanjing), Nanjing, PRC,

— Jiangsu Yoke Technology Co. Ltd, Yixing, PRC;

Related importers in the EU

— Albemarle Europe, Louvain-La-Neuve, Belgium,

— Shekoy Chemicals Europe BV, Breda, the Netherlands;

Union producers

— ICL-IP Bitterfeld GmbH, Bitterfeld-Wolfen, Germany,

— LANXESS Deutschland GmbH, Leverkusen, Germany,

— PCC Rokita SA, Brzeg Dolny, Poland.

(10) In view of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted and the exporting producer that requested only IT, a verification to establish normal value on the basis of data from the USA as analogue country took place at the premises of the following company:

— ICL-IP America Inc., St Louis, Missouri, USA.

2.1. *Investigation period and period considered*

(11) The investigation of dumping and injury covered the period from 1 July 2009 to 30 June 2010 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2007 to the end of the investigation period (period considered).

3. **Product concerned and like product**

3.1. *Product concerned*

(12) The product concerned is tris(2-chloro-1-methylethyl)phosphate originating in the PRC currently falling within CN code ex 2919 90 00.

The product has as Customs and Statistics (CUS) number 0024577-2. It is also called 'TCPP' and is also known under the following synonyms:

— 2-Propanol, 1-chloro, phosphate (3:1),

— tris(monochloroisopropyl)phosphate (TMCP),

— tris(2-chloroisopropyl)phosphate (TCIP),

— phosphoric acid, tris(2-chloro-1-methylethyl)ester,

— tris(beta-chloroisopropyl)phosphate,

— 1-chloro-2-propanol phosphate (3:1).

(13) The product concerned is a flame retardant mainly used in the production of polyurethane (PUR) for use in construction and furniture.

3.2. *Like product*

(14) The investigation has shown that TCPP produced and sold on the domestic market of the PRC and TCPP imported into the Union from the PRC, and that produced and sold on the domestic market of the USA, which served as an analogue country, as well as the TCPP produced and sold in the Union by the Union industry have the same basic physical, chemical and technical characteristics and uses. Therefore, these products are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

4. **Preliminary findings and subsequent procedure**

(15) On 27 April 2011, the Commission disclosed to interested parties an information document setting out its preliminary findings with respect to this proceeding. Given the need to examine certain aspects of the investigation further, it was considered appropriate not to impose any provisional measures and to continue the investigation. All parties were given the opportunity to submit relevant evidence and comments on the preliminary findings. The parties which so requested were also granted the opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its final findings.

B. **WITHDRAWAL OF THE COMPLAINT AND TERMINATION OF THE PROCEEDING**

(16) By a letter dated 16 June 2011 addressed to the Commission, the complainant formally withdrew its complaint.

(17) In accordance with Article 9(1) of the basic Regulation, the proceeding may be terminated where the complaint is withdrawn unless such termination would not be in the Union interest.

(18) The Commission considered that the present proceeding should be terminated since the investigation had not brought to light any consideration showing that such termination would not be in the Union interest. Interested parties were informed accordingly and were given the opportunity to comment. However, no comments that could alter that decision were received.

(19) The Commission therefore concludes that the anti-dumping proceeding concerning imports into the Union of tris(2-chloro-1-methylethyl)phosphate originating in the PRC should be terminated without the imposition of measures,

HAS ADOPTED THIS DECISION:

Article 1

The anti-dumping proceeding concerning imports of tris(2-chloro-1-methylethyl)phosphate originating in the People's Republic of China currently falling within CN code ex 2919 90 00 is hereby terminated.

Article 2

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

Done at Brussels, 9 August 2011.

For the Commission

The President

José Manuel BARROSO