Commission Implementing Regulation (EU) 2018/921 of 28 June 2018 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2018/921

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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)] prior to its amendment by Regulation (EU) 2017/2321 of the European Parliament and of the Council[(2)] ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

A. PROCEDURE

1. Previous investigations and measures in force

(1) In 2006, the Council imposed, by means of Regulation (EC) No 130/2006[(3)], a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China ('PRC', China or 'the country concerned') ('the original measures'). These measures took the form of individual duty rates ranging from 0 % to 10,1 % for three Chinese exporting producers which received market economy treatment ('MET') and 34,9 % for all other Chinese exporting producers. By Council Regulation (EC) No 150/2008[(4)], following an interim review in accordance with Article 11(3) of the basic Regulation, the original measures were amended and the product definition was clarified.

(2) In April 2012, by Council Implementing Regulation (EU) No 332/2012[(5)], following the publication of the Beef and Rice WTO Appellate Body report[(6)], the Council excluded exports from Hangzhou Bioking Biochemical Engineering Co. Ltd ('Hangzhou Bioking'), an exporting producer benefitting from a 0 % duty rate, from the scope of the measures.

(3) In April 2012, following an expiry review in accordance with Article 11(2) of the basic Regulation, the Council extended the measures for a further five years by Implementing Regulation (EU) No 349/2012[(7)] ('previous expiry review').

(4) In July 2012, following a partial interim review in accordance with Article 11(3) of the basic Regulation, by means of Council Implementing Regulation (EU) No

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626/2012[8], the original measures were amended. The Council withdrew MET for the remaining two companies, Changmao Biochemical Engineering Co. Ltd ('Changmao Biochemical') and Ninghai Organic Chemical Factory ('Ninghai Organic'), and established an individual anti-dumping margin in respect of these companies, respectively 13,1 % and 8,3 %, by using their own export prices

(5) An anti-dumping investigation initiated on 4 December 2014[9] with regard to imports into the Union of tartaric acid originating in the PRC, limited to Hangzhou Bioking on the basis of Article 5 of the basic Regulation, was terminated by Commission Implementing Decision (EU) 2016/176[10] without imposing measures.

(6) By its judgment of 1 June 2017 in Case T-442/12 *Changmao Biochemical Engineering* v *Council*[11], the General Court annulled Regulation (EU) No 626/2012 in so far as that regulation applies to Changmao Biochemical.

(7) On 7 September 2017, the Commission published a Notice in the *Official Journal of the European Union* concerning the judgment of 1 June 2017 in case T-442/12. The Commission decided to reopen the anti-dumping investigation concerning imports of tartaric acid originating in the PRC that led to the adoption of Regulation (EU) No 626/2012, in so far as it concerns the exporting producer concerned, and resumed it at the point at which the irregularity occurred. That reopening was limited in scope to the implementation of the judgment of the General Court with regard to Changmao Biochemical Engineering Co. Ltd. The reopening did not affect other investigations.

2. **Request for an expiry review**

(8) Following the publication of a notice of impending expiry[12], the Commission received a request for review pursuant Article 11(2) of the basic Regulation ('request for review').

(9) The request for review was lodged on 24 January 2017 by Distillerie Bonollo S.r.l., Caviro Distillerie S.r.l., Industria Chimica Valenzana SpA, Alvinesa Alcoholera Vinícola SA, and Comercial Química Sarasa SL ('the applicants'), representing more than 25 % of the total Union production of tartaric acid.

(10) The request was based on the grounds that the expiry of the measures imposed on imports of tartaric acid originating in China would be likely to result in a continuation or recurrence of dumping and continuation or recurrence of injury to the Union industry.

3. **Initiation of an expiry review**

(11) Having determined, after consulting the Advisory Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 19 April 2017 the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, by a notice published in the *Official Journal of the European Union*[13] ('Notice of initiation').

4. **Investigation**

4.1. *Review investigation period and period considered*

(12) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 January 2016 to 31 December 2016 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2013 to the end of the review investigation period ('the period considered').

4.2. *Parties concerned by this investigation*

(13) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, users in the Union known to be concerned and the representatives of the exporting country concerned of the initiation of the expiry review.

(14) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.

4.3. *Sampling*

(15) In its Notice of initiation, the Commission stated that it might sample interested parties in accordance with Article 17 of the basic Regulation.

4.3.1. Sampling of exporting producers in China

(16) In view of the apparent large number of exporting producers from China, sampling was envisaged in the Notice of initiation.

(17) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the Commission asked all known exporting producers to come forward within 15 days of the publication of the Notice of initiation and to provide it with the information requested in this notice. The information requested included production volume and production capacity. In addition, the Commission invited the Mission of the PRC to the European Union to appoint a representative who could cooperate with the Commission in the selection of the sample.

(18) None of the 22 Chinese exporter/producers that were contacted or any other Chinese exporter/producer came forward and provided the information requested.

4.3.2. Sampling of Union producers

(19) Prior to initiation, the Commission contacted the Union producers and associations of Union producers identified in the application for review in view of verifying whether the Union producers presenting the application were sufficiently representative. The Commission also collected information necessary to decide on the potential sampling, foreseen on point 5.3 of the Notice of initiation.

(20) In accordance with Article 17 of the basic Regulation, the Commission provisionally selected a sample of six Union producers having the largest sales volumes in the Union during the period of 1 January to 31 December 2016. These six companies

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represented 86 % of the total Union industry's sales volume of TA. Interested parties were invited to comment on the provisional sample.

(21) One Union producer which was not included in the provisional sample claimed that it should be included in the final sample in order to give a better picture of the situation of the Union industry. This company was supported by the Italian trade association of Union producers of TA. Another Union producer stated that it did not wish to participate in the expiry review. No further comments were submitted.

(22) The Commission considered that in light of the comments received sampling of Union producers was no longer appropriate.

4.3.3. Sampling of unrelated importers

(23) In order to decide whether sampling was necessary and, if so, to select a sample, all unrelated importers were invited to participate in this investigation. Those parties were requested to make themselves known by providing the Commission with the information requested in Annex II of the Notice of initiation.

(24) In addition, 10 importers identified in the request were contacted by the Commission at initiation stage and were invited to explain their activity and to fill in Annex II of the Notice of initiation. Five companies replied to the sampling form for unrelated importers. However they did not qualify as importers of the product under review but were considered as users.

4.4. *Questionnaires*

(25) The Commission sent the questionnaires to all nine Union producers and six users. Questionnaires were also sent to 10 producers in potential market economy third countries namely in Argentina, Australia, Brazil, Chile and India.

(26) Questionnaire replies were received from seven Union producers, four users in the Union and one producer in the potential market economy third country Australia.

(27) None of the Chinese exporting producers cooperated.

4.5. *Verification visits*

(28) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and injury and for assessing whether the imposition of measures would be against the Union interest. Verification visits were carried out at the premises of the following companies:

(a) Union producers:

— Alvinesa Alcoholera Vinícola SA, Daimiel, Spain

— Caviro Distillerie S.r.l., Faenza, Italy

— Comercial Química Sarasa S.L., Girona, Spain

— Distillerie Bonollo SpA, Formigine, Italy

— Giovanni Randi SpA, Faenza, Italy

— ICV — Industria Chimica Valenzana SpA, Padova, Italy
— Villapana SpA, Faenza, Italy

(b) Users:
— DuPont Nutrition Biosciences ApS, Copenhagen, Denmark
— Saint-Gobain Construction Products UK Ltd, Leicestershire, United Kingdom.

B. PRODUCT UNDER REVIEW AND LIKE PRODUCT

1. Product under review

(29) The product under review is tartaric acid, excluding D-(-)- tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, originating in the PRC, currently falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90) ('the product under review').

(30) The product under review is used in wine, in beverage and food additives, as a retardant in plaster and in numerous other products. It can be obtained either from the by-products of winemaking, as is the case with production in the Union ('natural production') or via chemical synthesis from petrochemical compounds, as is the case with production in the PRC ('synthetic production'). Only L+ tartaric acid is manufactured from the by-products of winemaking. Synthetic production allows the manufacture of both L+ and DL tartaric acid. Both types are the product under review and have overlapping uses.

2. Like product

(31) It was considered that the product under review produced in the PRC and exported to the Union:
— the product produced and sold by the exporting producers on the domestic market of the PRC,
— the product produced and sold in the analogue country,
— the product produced and sold in the Union by the Union industry,

have the same basic physical and chemical characteristics, and the same basic uses. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

1. Preliminary remarks

(32) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

(33) Exports by Hangzhou Bioking were excluded from the analysis of the likelihood of continuation or recurrence of dumping pursuant to Implementing