Council Implementing Regulation (EU) No 626/2012 of 26 June 2012 amending Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 626/2012

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amending Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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 and Article 11(3), (5) and (6) thereof,

Having regard to the proposal submitted by the European Commission ('Commission') after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) In 2006, the Council imposed, by means of Regulation (EC) No 130/2006[(2)], a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China ('PRC' or 'the country concerned') ('the original anti-dumping measures'). This Regulation was amended by Council Regulation (EC) No 150/2008[(3)]. In 2012, the Council amended those measures by Implementing Regulation (EU) No 332/2012[(4)] and extended them for a further five years by Implementing Regulation (EU) No 349/2012[(5)].

2. **Initiation of an interim review**

(2) A request for review was lodged by the following producers in the Union: Distillerie Bonollo SpA, Industria Chimica Valenzana SpA, Distillerie Mazzari SpA, Caviro Distillerie SRL and Comercial Quimica Sarasa SL ('the applicants').

(3) The review request was limited in scope to the examination of dumping as far as two PRC exporting producers were concerned, namely Changmao Biochemical Engineering Co. Ltd, Changzhou, and Ninghai Organic Chemical Factory, Ninghai. The request alleged that the continued imposition of measures at the existing level, which was based on the level of dumping previously established, appeared to be no longer sufficient to counteract dumping, given that both companies should be denied market economy treatment (MET).

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 626/2012. (See end of Document for details)*

(4) Having determined that the Commission had at its disposal sufficient prima facie evidence for the initiation of an interim review, and after consulting the Advisory Committee, the Commission announced on 29 July 2011, in a notice published in the *Official Journal of the European Union*[6] ('the notice of initiation'), the initiation of an interim review limited to dumping pursuant to Article 11(3) of the basic Regulation.

3. **Investigation**

3.1. *Investigation period*

(5) The investigation concerning dumping covered the period from 1 July 2010 to 30 June 2011 ('the review investigation period' or 'RIP').

3.2. *Parties concerned by this investigation*

(6) The Commission officially advised the two exporting producers in the country concerned and the authorities of the country concerned of the initiation of the interim review.

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

3.3. *Questionnaire replies and verifications*

(8) The Commission sent questionnaires to the two exporting producers named in the request for review and to producers in the analogue country, Argentina.

(9) Questionnaire replies were received from the two PRC exporting producers, and also from the cooperating producer in the analogue country.

(10) In order to allow the two 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 for this purpose. Claims for MET, or for IT in case the investigation established that they do not meet the conditions for MET, were received from both of them.

(11) The Commission sought and verified all the information deemed necessary for a determination of dumping and carried out verifications at the premises of the following companies:

(a) Exporting producers in the PRC:
- Ninghai Organic Chemical Factory, Ninghai,
- Changmao Biochemical Engineering Co. Ltd, Changzhou;

(b) Exporting producers in the analogue country:
- Tarcol SA, Buenos Aires.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(12) The product concerned by this review is the same as the one in the original investigation, namely 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 ('the product concerned').

(13) The product concerned 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 or via chemical synthesis from petrochemical compounds, as is the case with production in the PRC. 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 product concerned and have overlapping uses.

2. **Like product**

(14) As in the previous investigation, it was considered that the tartaric acid produced in the PRC and exported to the Union, the tartaric acid produced and sold on the domestic market of the analogue country (Argentina) and the tartaric acid manufactured and sold in the Union by the Union producers 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. **DUMPING**

1. **Market economy treatment**

(15) Both companies named in the request for review claimed market economy treatment. Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value is to be determined in accordance with paragraphs 1 to 6 of that Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(16) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

(1) business decisions and costs are made in response to market conditions and without significant State interference;

(2) accounting records are independently audited in line with international accounting standards and applied for all purposes;

(3) there are no significant distortions carried over from the former non-market economy system;

(4) legal certainty and stability is provided by bankruptcy and property laws;

(5) currency exchanges are carried out at the market rate.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 626/2012. (See end of Document for details)*

(17) Both producers in the PRC requested MET pursuant to Article 2(7)(c) of the basic Regulation. Each MET application was analysed, and on-the-spot investigations were carried out at the premises of these cooperating companies.

(18) For both companies, MET was denied under Criterion 1 of Article 2(7)(c) based on evidence that the price of the basic raw material, benzene, was distorted. A comparison of domestic prices in the PRC, using the purchase prices of one cooperating producer as a source, against prices in other market economy countries showed a price difference of between 19 % and 51 % during the investigation period. The PRC imposes an import tariff on benzene of 40 % (although this was not in fact in force during the RIP) and also does not refund any of the 17 % VAT levied on its export. Distortions were also found in the price of the intermediate raw material, maleic anhydride, purchased by the other cooperating producer using its purchases as a source.

(19) MET was also denied to one company under Criteria 2 and 3 due to evidence of depressed land use right prices and also overvaluation of the company's assets for the purpose of guaranteeing a loan from a State-owned bank.

(20) Both companies disputed the findings of the Commission after they were disclosed to them. However neither company could explain the low price of benzene on the PRC market. The company referred to in recital 19 provided some documents to dispute the Commission's findings regarding the land use right prices and the valuation of their assets. However as these documents were requested during the inspection and were not provided, it was therefore decided that this information could not be verified or relied upon.

(21) MET is therefore denied to both companies.

(22) However both companies meet the requirements set out in Article 9(5) of the basic Regulation and are therefore entitled to an individual anti-dumping duty using their own export prices.

2. **Analogue country**

(23) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was determined on the basis of the price or constructed value in an appropriate market economy third country ('the analogue country'), or the price from the analogue country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

(24) As in the original investigation, Argentina was proposed in the notice of initiation as an appropriate analogue country for the purposes of establishing normal value pursuant to Article 2(7)(a) of the basic Regulation. Following the publication of the notice of initiation, one company in India and one company in Australia were identified as alternative possible producers in a market economy third country. However neither of the two companies responded to the questionnaire sent to them.

(25) One producer of tartaric acid in Argentina cooperated with the investigation by replying to a questionnaire. The investigation showed that Argentina had a competitive market for tartaric acid with two competing local producers and imports from third countries. The production volume in Argentina constitutes more than 20 % of the volume of PRC exports of the product concerned to the Union. The Argentinian market was therefore deemed sufficiently representative for the determination of normal value for the PRC.

(26) It is therefore concluded, as in the previous investigation, that Argentina constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3. **Normal value**

(27) Normal value was established on the basis of the information received from the cooperating producer in the analogue country. Although the analogue country producer had domestic sales of the product concerned, given the difference in the production method between Argentina and the PRC which has a significant impact on prices and costs, it was decided to construct normal value, rather than use these domestic sales prices. The cost of raw materials in Argentina was replaced by an average market price for benzene and an adjustment made to selling, general and administrative expenses (SG&A) in Argentina to better reflect the domestic market in the PRC.

(28) Normal value for L+ tartaric acid (which is manufactured by the Argentinian producer) was therefore constructed from the cost of production in Argentina of L + tartaric acid, taking into account the difference in production methods between Argentina and the PRC.

(29) Given that the Argentinian producer did not manufacture DL tartaric acid, a normal value was also constructed using the difference in price found between the two product types.

4. **Export price**

(30) Export prices were determined based on the actual price paid or payable by the first independent customer in the Union for both PRC exporting producers.

5. **Comparison**

(31) For the purposes of ensuring a fair comparison between the normal value and the export price in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to certain differences in transport, insurance and indirect taxation, where these were proven to affect prices and price comparability.

6. **Dumping margins**