Council Implementing Regulation (EU) No 349/2012 of 16 April 2012 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 (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 349/2012

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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(4) and Article 11(2), 11(5) and 11(6) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations and measures in force

(1) By Regulation (EC) No 130/2006[(2)] (the original Regulation), the Council imposed a definitive anti-dumping duty, ranging from 0 % to 34,9 %, on imports of tartaric acid (TA) originating in the People's Republic of China ('China'). It is recalled that the rate of the definitive anti-dumping duty imposed on TA produced by the Chinese exporting producer Hangzhou Bioking Biochemical Engineering Co. Ltd ('Hangzhou Bioking') was 0 % while it ranged between 4,7 % and 34,9 % for other Chinese exporting producers.

(2) On 22 February 2008, following a review initiated on the basis of Article 11(3) of the basic Regulation, the Council, by Regulation (EC) No 150/2008[(3)], amended the scope of the abovementioned measures.

(3) On 16 April 2012, following a review of the existing measures on Hangzhou Bioking initiated on the basis of Article 2(3) of Regulation (EC) No 1515/2001, in light of the WTO Appellate Body report entitled 'Mexico — Definitive Anti-Dumping Measures on Beef and Rice'[(4)], which found, in paragraphs 305 and 306, that an exporting producer not found to be dumping in an original investigation has to be excluded from the scope of the definitive measure imposed as a result of such investigation and cannot be made subject to administrative and changed circumstances

review, the Council, by Regulation (EU) No 332/2012[5], amended the measures regarding Hangzhou Bioking.

(4) The investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

2. **Request for an expiry review**

(5) Following the publication of a notice of impending expiry[6] of the anti-dumping measures in force, the Commission received on 27 October 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the following producers ('the applicants'): Distillerie Bonollo SpA, Industria Chimica Valenzana SpA, Distillerie Mazzari SpA, Caviro Distillerie SRL and Comercial Química Sarasa SL representing a major proportion, in this case more than 50 %, of the total Union production of TA.

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

3. **Initiation of an expiry review**

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 26 January 2011 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*[7] ('notice of initiation').

4. **Parallel cases**

(8) The Commission also announced on 29 July 2011 the initiation of an anti-dumping proceeding[8] pursuant to Article 5 on imports of TA originating in China, limited to one Chinese exporting producer, Hangzhou Bioking.

(9) On the same day, the Commission announced the initiation of a partial interim review[9] pursuant to Article 11(3) of the basic Regulation of the anti-dumping measures applicable to imports of TA originating in China limited to the examination of dumping as far as two Chinese exporting produces are concerned, namely Changmao Biochemical Engineering Co. Ltd, Changzhou City, and Ninghai Organic Chemical Factory, Ninghai.

5. **Investigation**

5.1. *Review investigation period and the period considered*

(10) The investigation of continuation of dumping covered the period from 1 January 2010 to 31 December 2010 ('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 2007 to the end of the review investigation period ('the period considered').

5.2. *Parties concerned by the investigation*

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

(12) 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.

(13) In view of the apparent large number of exporting producers from China, unrelated importers in the Union and Union producers involved in the investigation, sampling was envisaged in the notice of initiation, 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, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the publication of the notice of initiation and to provide the Commission with the information requested in the notice of initiation.

(14) In view of the replies received it was decided to apply sampling in respect of Union producers. No unrelated importers in the Union cooperated in the investigation. As regards exporting producers from China, only two exporting producers manifested their willingness to cooperate in the investigation. It was therefore decided that sampling was not necessary as regards exporting producers.

(15) Six Union producers provided the information requested in the notice of initiation and agreed to be included in the sample. On the basis of the information received from these Union producers, the Commission selected a sample of four Union producers which were found to be representative of the Union industry in terms of sales volumes of the like product in the Union. Their combined sales volume represented 61 % of the sales volume in the Union market.

(16) Questionnaire replies were received from the four sampled Union producers, two users in the Union, and two exporting producers in China. In addition, two cooperating Union producers provided the requested general data for the injury analysis.

(17) Exports made by Hangzhou Bioking, whose individual dumping margin in the original investigation was zero, have been excluded from both dumping and injury analysis, including the likelihood of continuation of dumping and risk of recurrence of injury resulting from dumped imports. The analysis in the present review was therefore based on exports of product concerned from China to the Union during the RIP excluding the exports made by the producer Hangzhou Bioking and is also referred to as ‘exports subject to measures’ in this Regulation.

(18) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 349/2012. (See end of Document for details)*

(a) Union producers:
- Comercial Química Sarasa SL,
- Alcoholera Vinícola Europea SA,
- Distillerie Mazzari SpA,
- Distillerie Bonollo SpA;

(b) exporting producers in China:
- Changmao Biochemical Engineering Co. Ltd,
- Ninghai Organical Chemical Factory;

(c) users:
- Danisco A/S,
- Kerry (NL) BV;

(d) producer in the analogue country:
- Tarcol SA, Argentina.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(19) The product concerned by this review is the same as the one defined in Regulation (EC) No 150/2008, which amended the scope of the measures established by the original Regulation as explained above. Namely, the product concerned 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 China, currently falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90) ('the product concerned').

(20) The review investigation confirmed that, as in the original investigation, the product concerned imported into the Union market and the products manufactured and sold by the exporting producers on the domestic markets, as well as those manufactured and sold in the Union by the Union Industry ('the like product'), have the same basic physical and chemical characteristics and uses. Therefore, these products are 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

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

(22) As mentioned in recital 13, in view of the potentially large number of exporting producers involved in this review, sampling was foreseen in the notice of initiation. From the 20 known exporting producers, only the two companies, both benefiting from market economy treatment, came forward and agreed to cooperate. These two companies cover most of the imports of product concerned from China to the

Union during the RIP excluding the exports made by the company Hangzhou Bioking, whose individual dumping margin in the original investigation was zero.

2. **Dumping of imports during the RIP**

2.1. *Analogue country*

(23) Since China is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted market economy treatment (MET) has to be determined on the basis of the price or constructed value in an appropriate market economy third country ('analogue country').

(24) As in the original investigation, Argentina was proposed as analogue country in the notice of initiation for the purpose of establishing normal value. Interested parties were given the opportunity to comment on the appropriateness of this choice.

(25) One industrial consumer of tartaric acid highlighted some constraints linked to the choice of Argentina as analogue market arguing that it should not be the sole benchmark for the purpose of determining normal value. The party concerned addressed in particular alleged differences in the production processes between China and Argentina, the limited amount of annual production as compared to world production and currency exchange rates fluctuation. However, none of these arguments were substantiated by any documentary evidence.

(26) In any event, the different production processes in Argentina and China and the resulting impact on the costing and the valuation of the product concerned were already carefully considered in the original investigation and it was concluded that it did not alter the comparability of the products that were found to be similar. As the allegation of the industrial consumer did not bring any new element and its claims were not substantiated, the argument is rejected. The findings of the current expiry review, therefore confirm the findings of the original investigation, i.e. that the differences in production processes did not have an impact on the comparability of the products.

(27) The limited size of the annual production in Argentina as compared to the world market of TA is not a relevant argument when assessing whether a specific market is suitable to establish normal value in an analogue market. Indeed, the investigation confirmed that Argentina is an open and competitive market with at least two operators. On these grounds, the argument is rejected.

(28) The argument of significant currency exchange fluctuation between regions was not substantiated. In addition, the on spot investigation did not gather any element pointing to any distortion of currency rates between regions. On these grounds, the argument is also rejected.

(29) Therefore, as in the original investigation, it was concluded that Argentina was an appropriate analogue country from which normal value will be determined.