Council Implementing Regulation (EU) No 332/2012 of 13 April 2012 amending Regulation (EC) No 130/2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of tartaric acid originating in the People's Republic of China, and excluding company Hangzhou Bioking Biochemical Engineering Co., Ltd from the definitive measures

COUNCIL IMPLEMENTING REGULATION (EU) No 332/2012

of 13 April 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 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters[(1)], and in particular Article 2(1) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) By Regulation (EC) No 130/2006[(2)], 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'). 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 %.

2. **Initiation of an expiry review and of a review of existing measures on Hangzhou Bioking**

(2) Following the publication of a notice of impending expiry[(3)] 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 Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(4)] ('the basic Regulation').

(3) 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*[(5)] ('Notice of initiation').

(4) In the Notice of initiation, the Commission also announced the initiation of a review of existing measures on Hangzhou Bioking pursuant to Article 2(3) of Regulation (EC) No 1515/2001 in order to allow for any necessary amendment of Regulation (EC) No 130/2006 in the light of the WTO Appellate Body report entitled Mexico — Definitive Anti-Dumping Measures on Beef and Rice[(6)]. This report 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.

3. **Initiation of a new proceeding**

(5) On 29 July 2011, the Commission announced, by a notice published in the *Official Journal of the European Union*[(7)], the initiation of an anti-dumping investigation pursuant to Article 5 of the basic Regulation concerning imports into the European Union of tartaric acid originating in China, limited to Hangzhou Bioking.

4. **Exclusion of Hangzhou Bioking from the definitive anti-dumping measures imposed by Regulation (EC) No 130/2006**

(6) Hangzhou Bioking should be excluded from the definitive anti-dumping measures imposed by Regulation (EC) No 130/2006 in order not to fall under two anti-dumping proceedings at the same time,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 130/2006 is hereby amended as follows:

In Article 1(2), in the table, the entry concerning Hangzhou Bioking Biochemical Engineering Co., Ltd shall be deleted and the entry 'All other companies' shall be replaced by the entry 'All other companies (except Hangzhou Bioking Biochemical Engineering Co., Ltd — TARIC additional code A687)'.

Article 2

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.