Council Regulation (EC) No 727/2008 of 24 July 2008 terminating the new exporter review of Regulation (EC) No 130/2006 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China

COUNCIL REGULATION (EC) No 727/2008

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terminating the new exporter review of Regulation (EC) No 130/2006 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 establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Articles 11(4) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

1. MEASURES IN FORCE

(1) By Regulation (EC) No 130/2006[(2)], the Council imposed a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China (PRC) (the original investigation). The measures in force consist of an *ad valorem* duty rate of 34,9 %, with the exception of several companies expressly mentioned which are subject to individual duty rates.

(2) By Regulation (EC) No 150/2008[(3)], following an interim review pursuant to Article 11(3) of the basic Regulation, the Council amended the scope of the measures.

2. CURRENT INVESTIGATION

2.1. Request for a review

(3) Subsequent to the imposition of the definitive anti-dumping measures, the Commission received a request for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The request was based on the claim that the exporting producer, Fuyang Genebest Chemical Industry Co Ltd. (the applicant):

— did not export tartaric acid before or during the investigation period of the original investigation,

— was not related to any of the exporting producers subject to the measures imposed by Regulation (EC) No 130/2006,

— had started to export tartaric acid to the Community after the end of the investigation period of the original investigation,

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 727/2008. (See end of Document for details)*

— operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively claims individual treatment in conformity with Article 9(5) of the basic Regulation.

2.2. Initiation of a 'new exporter' review

(4) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review pursuant to Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 1406/2007[(4)], a review of Regulation (EC) No 130/2006 with regard to the applicant.

(5) Pursuant to Article 2 of Regulation (EC) No 1406/2007, the anti-dumping duty imposed by Regulation (EC) No 130/2006 on imports of tartaric acid produced by the applicant was repealed. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register the imports of tartaric acid produced by the applicant.

2.3. Product concerned

(6) The product concerned by the current review is tartaric acid, the same as in the original investigation, subject, however, to the limitation in scope introduced by Regulation (EC) No 150/2008.

2.4. Parties concerned

(7) The Commission officially advised the Community industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(8) The Commission sent a market economy treatment claim and a questionnaire to the applicant and received a reply within the deadlines set for this purpose.

(9) The Commission sought and verified all the information deemed necessary for its analysis and carried out a verification visit at the premises of the applicant.

2.5. Review investigation period

(10) The investigation of dumping covered the period from 1 April 2006 – 30 September 2007 (review investigation period or RIP).

3. RESULTS OF THE INVESTIGATION

3.1. Findings

(11) The questionnaire response indicated a number of export sales transactions which were identical to the information submitted in the application for the review and which were allegedly destined for the Community.

(12) The investigation showed that the applicant did not directly export the product concerned (defined in section 2.3 above) during the RIP. The export transactions were in

fact made by an independent trader in the PRC, to which the applicant issued a domestic invoice. The applicant could only provide customs declaration forms which showed that the goods were exported from the PRC but which did not indicate the export destination. A further investigation was carried out at the premises of this trader in order to obtain and verify the necessary evidence of the alleged exports to the Community.

(13) The verification of the export documentation did not show that the goods had been released for free circulation in the Community. The goods were unloaded in two Community ports, but the invoices were addressed to a customer located in a third country outside the Community. The trader confirmed that the final destination of the goods was outside the Community, where the final customer was located.

(14) Eurostat import statistics of tartaric acid were also analysed. The analysis of the import statistics confirmed that the goods exported by the applicant were not released for free circulation within the Community.

3.2. Conclusion

(15) On the basis of the above findings, it was concluded that the applicant could not demonstrate that it met the criteria for being considered a new exporter within the meaning of Article 11(4) of the basic Regulation.

(16) The purpose of the present review was to determine the individual margin of dumping of the applicant, which was allegedly different from the current residual margin applicable to imports of the product concerned from the PRC. The request was mainly based on the allegation that the applicant had started to export tartaric acid to the Community after the end of the investigation period of the original investigation and that it had such exports to the Community during the RIP.

(17) The investigation concluded that, in the absence of exports to the Community during the RIP, the Commission could not establish that the applicant's individual dumping margin was indeed different from the residual dumping margin established in the original investigation. Therefore, the request made by the applicant should be rejected and the new exporter review terminated. The residual anti-dumping duty found during the original investigation, i.e. 34,9 %, should consequently be maintained as far as the applicant is concerned.

4. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

(18) In the light of the above findings, the anti-dumping duty applicable to the applicant shall be levied retroactively on imports of the product concerned, which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 1406/2007.

5. FINAL PROVISIONS

(19) The applicant, the Community industry and the representatives of the exporting country were informed of the essential facts and considerations leading to the above conclusions and were given an opportunity to comment. No comments which were of a nature to change the above conclusions were received.