Council Regulation (EC) No 150/2008 of 18 February 2008 amending the scope of the anti-dumping measures imposed by Regulation (EC) No 130/2006 on imports of tartaric acid originating in the People's Republic of China

COUNCIL REGULATION (EC) No 150/2008

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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 Article 11(3) 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 original Regulation) the Council imposed a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China (PRC).

2. PRESENT INVESTIGATION

2.1. Procedure

(2) The Commission received a request from CU Chemie Uetikon GmbH ('the applicant'), an importer from Germany, for a partial interim review pursuant to Article 11(3) of the basic Regulation. The applicant alleged that the so-called D-(-) type is a distinct product from other types of tartaric acid, due to its specific molecular structure, which in turns determines specific chemical characteristics not shared by other types of the product concerned and should not be therefore subject to the abovementioned measures.

(3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission, on 17 March 2007, initiated an investigation[(3)] according to Article 11(3) of the basic Regulation. The investigation was limited in scope to the definition of the product covered by the measures in force.

(4) The Commission officially advised the applicant importer, the authorities of the exporting country and all parties known to be concerned, of the initiation

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 150/2008. (See end of Document for details)*

of this review. Questionnaires were sent to Community producers, importers, users and exporting producers who cooperated in the investigation that led to the existing measures. 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.

(5) Two questionnaire replies were received and one party was granted a hearing.

(6) The Commission sought and verified all the information it deemed necessary for the purpose of assessing whether the scope of the measures should be amended and carried out investigations at the premises of the following companies:

— CU Chemie Uetikon GmbH, Lahr, Germany,

— Longchem Corporation, Hangzhou, China.

(7) The investigation period covered the period from 1 January 2006 to 31 December 2006.

2.2. Product concerned

(8) The product concerned, as defined in the original Regulation, is tartaric acid originating in the People's Republic of China, currently classifiable within CN code 2918 12 00. 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 form the by-products of wine making, as is the case with all Community producers, or via chemical synthesis from petrochemical compounds, as is the case with all PRC exporting producers.

2.3. Findings

(9) Tartaric acid is a 'chiral' molecule, i.e. it exists in different geometric configurations. The 'L-(+)' and 'D-(-)' types (hereinafter 'L' and 'D' tartaric acid respectively), whose molecules are a mirror image of each other, are of particular relevance. Those types of tartaric acid are distinguished in widely accepted industry references such as Chemical Abstract Services (CAS) or European Inventory of Existing Commercial Chemical Substances (Einecs). They can be readily distinguished from one another through a test which measures the rotation of polarised light. The direction of rotation for 'L' tartaric acid is positive while that for 'D' tartaric acid is negative.

(10) The investigation which led to the measures in force focused on naturally-occurring tartaric acid. It was found that the product manufactured and sold by the Chinese producers had the same basic characteristics as the product of the Community industry, and was in competition with the latter for a majority of the abovementioned applications.

(11) 'D' tartaric acid, on the other hand, is not naturally-occurring and can only be obtained via chemical synthesis. This type of tartaric acid is not produced by the Community industry and it is not recognised in the Community as a food additive. Its known applications are in the pharmaceutical industry, in the production of certain auxiliary substances which are themselves used to produce the active ingredients of

medicines. Either 'L' or 'D' tartaric acid can be used in this type of pharmaceutical applications, depending on the intended characteristics of the end product. However, the 'D' and 'L' types cannot be substituted for one another within any single application. These conclusions were confirmed by the fact that the applicant, a company producing auxiliary substances for the pharmaceutical industry, purchased and used both 'L' and 'D' tartaric acid in the manufacture of its products, rather than just using one (less expensive) type of tartaric acid.

(12) The investigation has also shown that the price of 'D' tartaric acid is 4 to 5 times higher than that of other types of tartaric acid, which is a result of the different production process used in its manufacture. This higher price restricts the market for 'D' tartaric acid to applications such as mentioned above, where other, less expensive types of tartaric acid cannot be used. As a result of those differences in application and costs, the size of the market for 'D' tartaric acid is estimated to be less than 1 % of the overall market for tartaric acid.

(13) In summary, the investigation has found that 'D' tartaric acid has substantially different physical and chemical characteristics from those of 'L' tartaric acid produced by the Community industry, meaning that the two types are not interchangeable and not competing in the Community market. Given those differences between 'D' tartaric acid and the product investigated, it is concluded that 'D' tartaric acid should not be covered by the product scope of the measures.

(14) The above conclusions were based on the characteristics of pure 'D' tartaric acid, and therefore do not apply to any mixtures of 'D' tartaric acid with other products.

(15) Interested parties were informed of the above conclusions.

(16) The Community industry, while not questioning the findings of the investigation, expressed its concern that exempting one product type could facilitate the circumvention of the measures.

(17) It is considered, however, that given the differences in prices and quantities involved, circumvention can promptly be detected through statistical data. Furthermore, 'D' tartaric acid can be easily distinguished from other types through an optical test as mentioned above.

(18) The Commission will monitor the import data of 'D' tartaric acid and the other types which are subject to measures. Should the quantities and/or prices of imports of 'D' tartaric acid into any Member State depart from the normal trend, the Commission will immediately alert the appropriate customs authorities.

3. RETROACTIVE APPLICATION

(19) Given the above, it is considered appropriate to amend the original Regulation to clarify the product definition and to exclude 'D' tartaric acid from the measures.

(20) Since the present review investigation is limited to the clarification of the product scope and since it was not intended this product type be covered by the original measures, in order to prevent any consequent prejudice to importers of the product, it is