Council Regulation (EC) No 130/2006 of 23 January 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

COUNCIL REGULATION (EC) No 130/2006

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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 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 1259/2005[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of tartaric acid (TA), currently classifiable within CN code 2918 12 00, originating in the People's Republic of China (PRC).

(2) It is recalled that the investigation of dumping and injury covered the period from 1 July 2003 to 30 June 2004 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2001 to 30 June 2004 (period considered). The period used for the findings on undercutting, underselling and injury elimination is the aforementioned IP.

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of a provisional anti-dumping duty on imports of TA originating in the PRC, some interested parties submitted comments in writing.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. Following the imposition of provisional measures, the Commission carried out further verifications, principally in order to verify the determination of normal value, at the premises of the following companies:

Exporting producers in the PRC

— Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou, PRC.

— Changmao Biochemical Engineering Co., Ltd, Changzhou City, PRC.

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— Ninghai Organic Chemical Factory, Ninghai, PRC.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the parties were considered, and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(7) The product concerned is tartaric acid, 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 from 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.

(8) Two importers argued that a distinction should be made between TA of food or pharmaceutical grades, such as the natural TA produced by the Community industry, and synthetic TA of technical (non-food) grades. They also argued that the latter should be excluded from the proceeding since, unlike TA produced by the Community industry, the technical grades could not be used for human consumption.

(9) One importer also pointed out that the TA produced by the Community industry and that imported from the PRC resulted from completely different production processes, and only natural TA could be used for wine production. This importer further claimed that the particular type of TA it imported was tailored to the needs of one particular user and could not be used by others. This importer therefore argued that this type of TA and that produced by the Community industry were not like products.

(10) While it is recognised that there are different types of TA which are not equally suited to all applications, the investigation confirmed that all these types of TA share the same basic physical and chemical characteristics. As far as applications are concerned, for wine making, which represents about 25 % of the market, only natural tartaric acid can be used. However, for the remaining 75 %, including some products destined for human consumption, both natural and synthetic TA can be used and are therefore in competition. It should also be noted that production processes as such are not relevant for the definition of like product.

(11) In the absence of any other comments concerning the product concerned and like product, recitals 11 to 13 of the provisional Regulation are hereby confirmed.

D. DUMPING

1. Market economy treatment (MET)

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(12) In the absence of any comments regarding the granting of MET, the conclusions reached in recitals 14 to 17 of the provisional Regulation are definitively confirmed.

2. Normal value

(13) Following provisional disclosure, no comments were received concerning the methodology for determining normal value. Accordingly, the conclusions reached in recitals 18 to 34 of the provisional Regulation are definitively confirmed.

3. Export price

(14) In the absence of any relevant comments regarding export prices, the conclusions reached in recital 35 of the provisional Regulation are definitively confirmed.

4. Comparison

(15) In the absence of any comments regarding the comparison between the normal value and the export prices, the conclusions reached in recitals 36 to 37 of the provisional Regulation are definitively confirmed.

5. Dumping margin

(a) For the cooperating exporting producers granted MET

(16) Two exporting producers submitted claims concerning the detailed calculations made for establishing the level of the provisional dumping margins found. These comments were considered in light of the revised data obtained during the verification visits as outlined in recital 4 of this Regulation. Furthermore, some calculation errors were corrected.

(17) Accordingly, the definitive weighted average dumping margins expressed as a percentage of the cif Community frontier price duty unpaid, are:

Company	**Definitive dumping margin**
Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou	0,3 %
Changmao Biochemical Engineering Co., Ltd, Changzhou City	10,1 %
Ninghai Organic Chemical Factory, Ninghai	4,7 %

(b) For all other exporting producers

(18) Following provisional disclosure, no comments were received concerning the methodology for calculating the dumping margin for all other exporting producers.

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Accordingly, the provisional countrywide level of dumping of 34,9 % of the cif Community frontier price is definitively confirmed.

E. INJURY

1. Community production

(19) In the absence of comments concerning Community production, recitals 43 to 44 of the provisional Regulation are hereby confirmed.

2. Definition of the Community industry

(20) One importer submitted that some of the Community producers which were originally complainants had ceased production, and asked the Commission to verify whether there was still enough support for the investigation according to Article 5(4) of the basic Regulation.

(21) In this respect, the investigation confirmed that the producers supporting the complaint represented over 95 % of the estimated Community production during the IP. Therefore, the requirements of Article 5(4) of the basic Regulation are fulfilled.

(22) In the absence of any other comments concerning the definition of the Community industry, recital 45 of the provisional Regulation is hereby confirmed.

3. Community consumption

(23) In the absence of any comments concerning the Community consumption, recital 46 of the provisional Regulation is hereby confirmed.

4. Imports into the Community from the country concerned

(24) In the absence of any comments concerning the imports from the country concerned, recitals 47 to 52 of the provisional Regulation are hereby confirmed.

5. Situation of the Community industry

(25) One importer/user and one exporter objected to the analysis in the provisional Regulation based on the argument that some EC producers had ceased production, and should therefore not have been taken into consideration in assessing the situation of the Community industry.

(26) It should be noted that the Commission's analysis of the factors mentioned in Article 3(5) of the basic Regulation did not include any data from the companies which had ceased production. Such companies were mentioned in the provisional Regulation only insofar as necessary for interpreting some aggregate indicators such as for example market shares or total production capacity. This was each time clearly explained in the text presenting each indicator concerned, in order to give a complete and correct assessment of the situation of the Community industry. Therefore, it is considered that the analysis of the situation of the Community industry was made in full accordance with the basic Regulation.

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(27) In the absence of any other comments concerning the situation of the Community industry, recitals 53 to 82 of the provisional Regulation are hereby confirmed.

F. CAUSATION

(28) One exporter argued that the Community producers had a dominant position in the market and that Chinese imports, with only 11,5 % of the market, could not be the main cause of injury.

(29) As for the market share of PRC exports, it is estimated at between 11,5 and 15,8 %, according to whether Eurostat or Chinese statistical sources are used. Even a conservatively estimated market share of 11,5 % cannot be considered insignificant given that, as mentioned in the provisional Regulation, injury was clearly caused by the increasing pressure of growing imports at prices substantially undercutting the prices of the Community industry. As to whether or not the Community industry had a dominant position is ultimately not relevant if it is established that the Community industry suffered injury from no other substantial causes than the dumped imports. In this respect, it should be noted that, despite its larger market share, the Community industry had not been able to avoid major losses during the period considered. This contradicts the claim that it has benefited from a dominant position. Moreover, imports from third countries also ensured that there was sufficient competition in the market.

(30) Another exporter pointed out that the new production brought into the market by the two recently established EC producers was more important than the increase in Chinese imports and therefore injury would have been self-inflicted. However, the prices of the new EC producers were in line with those of the established ones and their production was less than the production of the companies which had ceased business. For these reasons, without the Chinese imports, their entry into the market could not explain the price collapse, which occurred in a context of increasing Community consumption.

(31) Another exporter claimed that the regulatory framework of the common agricultural policy distorts normal market conditions for the EC producers and that the causation analysis failed to take this into account. Although this argument was only made in very general terms, it should be noted that the common agricultural policy does not regulate the price of TA itself, but only sets minimum prices for some of the inputs in TA production as well as a selling price for alcohol. As set out in recital 89 of the provisional Regulation, these regulatory parameters remained stable throughout the period and can therefore not account for the deterioration of the Community industry's situation. Furthermore, they do not call into question that Chinese imports are dumped and causing injury to the Community industry.

(32) In the absence of any other comments concerning causality, recitals 83 to 95 of the provisional Regulation are hereby confirmed.

G. COMMUNITY INTEREST