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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.6.2008
COM(2008) 410 final

Proposal for a

COUNCIL REGULATION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation').

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 130/2006 of 27 January 2006 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China.

- **Consistency with other policies and objectives of the Union**

Not applicable.

(2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the investigation have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

(3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

By Regulation (EC) No 130/2006 of 27 January 2006, the Council imposed a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China ('original investigation')

On 30 November 2007, the Commission initiated a new exporter review for one exporting producer in the People's Republic of China. The initiation, by way of publication of Commission Regulation (EC) No 1406/2007, was based on *prima facie* evidence supplied by one exporting producer showing that this exporting producer

- did not export tartaric acid before or during the investigation period of the original investigation,
- was not related to any of the exporting producers that are subject to the measures imposed by Council Regulation 130/2006,
- had started to export tartaric acid to the Community after the end of the investigation period of the original investigation.

The enclosed Commission proposal for a Council Regulation is terminating this new exporter review, as the investigation has shown that the exporting producer did not export tartaric acid to the Community after the end of the investigation period of the original investigation.

It is proposed that the Council adopts the attached proposal for a Regulation which should be published in the *Official Journal of the European Union*.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle because the form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate because the above-mentioned basic Regulation does not foresee alternative options.

(4) BUDGETARY IMPLICATION

The proposal has no implications for the Community budget.

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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 Community¹ ('the basic Regulation'), and in particular Articles 11(4) thereof,

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

Whereas:

1. MEASURES IN FORCE

- (1) By Regulation (EC) No 130/2006², 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 150/2008³, 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,

¹ OJ L 56, 6.3.1996, p.1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p.17).

² OJ L 23, 27.1.2006, p.1

³ OJ L 48, 22.2.2008, p.1.

- 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 1406/2007⁴, a review of Regulation (EC) No 130/2006 with regard to the applicant.
- (5) Pursuant to Article 2 of Commission Regulation 1406/2007, the anti-dumping duty imposed by Council 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

⁴ OJ L 312, 30.11.2007, p.12

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 Commission 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.
- (20) This review does not affect the date on which the measures imposed by Regulation (EC) No 130/2006, as amended by Regulation (EC) No 150/2008, will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The new exporter review initiated by Commission Regulation (EC) 1406/2007 is hereby terminated and the anti-dumping duty applicable, according to Article 1 of Council Regulation (EC) No 130/2006, as amended by Council Regulation (EC) No 150/2008, to 'all other companies' in the People's Republic of China is hereby imposed on imports identified in Article 1 of Commission Regulation (EC) No 1406/2007.
2. The anti-dumping duty applicable, according to Article 1(2) of Council Regulation (EC) No 130/2006, as amended by Council Regulation (EC) No 150/2008, to 'all other companies' in the People's Republic of China is hereby levied with effect from 1 December 2007 on imports of tartaric acid which have been registered pursuant to Article 3 of Commission Regulation (EC) No 1406/2007.
3. The customs authorities are hereby directed to cease the registration carried out pursuant to Article 3 of Commission Regulation (EC) No 1406/2007.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

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.

Done at Brussels,

*For the Council
The President*