



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

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

(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 461/2004 of 8 March 2004 ("the basic Regulation") in the proceeding concerning imports of tartaric acid originating in the People's Republic of China.

- **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**

Commission Regulation (EC) No 1259/2005 imposing a provisional anti-dumping duty on imports of tartaric acid originating in the People's Republic of China.

- **Consistency with the 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 proceeding have already 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**

On 30 October 2004, the Commission opened an anti-dumping investigation with

regard to imports into the Community of tartaric acid originating in the People's Republic of China.

By Regulation (EC) No 1259/2005 of 27 July 2005, the Commission imposed provisional anti-dumping duties on these imports.

The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Community interest which confirmed the provisional findings while introducing some changes to the calculation of the dumping margins.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal no later than 28 January 2006..

- **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 461/2004 of 8 March 2004.

- **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 for the following reason(s).

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 for the following reason(s).

The above-mentioned basic regulation does not foresee alternative options.

4) **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

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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 Community¹ ('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 1259/2005² (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:

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

² OJ L 200, 30.7.2005, p. 73.

a) Exporting producers in the PRC

- Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou, PRC.
 - Changmao Biochemical Engineering Co., Ltd, Changzhou City, PRC.
 - 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)

(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 co-operating 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. 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 explaining 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.

- (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 of 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. 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

- (33) One user from the gypsum industry claimed that the proportion represented by TA in the gypsum industry's production costs, mentioned in the provisional Regulation (less than 2%) was too low. This figure was, however, based on the data submitted by the same company. According to the same data, the figure would be slightly higher, if it is expressed as a percentage of only those products containing TA. On the other hand, two other gypsum groups have indicated much lower percentages than this. This confirmed that the data used in the provisional Regulation can be considered to be a reasonable estimate.
- (34) Moreover, it is recalled that the gypsum products in which TA is used as a retardant are not exposed too much competition from non-EC suppliers, according to Eurostat data. The conclusion of the provisional Regulation, that a moderate dumping duty on this percentage of the costs should not have a major impact upon the costs and competitive position of those user industries, is therefore maintained.
- (35) The same user also argued that the measures could lead to shortages of TA, as was claimed to have happened in the past. However, it is not considered that anti-dumping duties of the proposed individual levels on companies representing about two-thirds of PRC exports would foreclose the EC market to PRC suppliers.
- (36) One user from the emulsifier industry argued that their competitive position would be jeopardized if measures were introduced on imports of TA originating in the PRC. This user claimed that due to technical change, emulsifiers are increasingly subject to competition from non-EU producers and that a cost increase following the imposition of measures would affect their competitive position in the market. The Commission tried to verify the possible effect of measures on this category of users on the basis of quantified data. However, in the absence of meaningful replies to the Commission's questionnaire and of co-operation from this group of users, this was not possible.
- (37) In the absence of any other comments concerning Community interest, recitals (98) to (114) of the provisional Regulation are hereby confirmed.

H. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

- (38) Further to the disclosure of provisional findings, the Community industry claimed that the calculated non-injurious price was too low on two grounds:
- The price of raw materials was depressed during the IP, i.e. the industry had managed to pass on to the upstream sectors some of the pressure on prices. This is recognised in recital (69) of the provisional Regulation, whilst the interest of suppliers is analysed under recitals (101) to (106). However, as mentioned in recital (89), the Common Agricultural Policy sets out a minimum price for the purchases of raw material. Furthermore, the industry did not substantiate its claim and did not submit any evidence indicating that the price level of raw materials would not be sustainable and should be higher than that minimum. Therefore, it was concluded that the argument was not founded.

- It was claimed that the normal profit margin used in the injury calculation, 8%, was too low for this type of industry. However, given the level of profits observed for the Community industry in the years before the IP and prior to the market penetration of the dumped imports, this percentage represents an adequate margin to reflect a normal profit level that could be achieved in the absence of such imports.

(39) In the absence of any other comments concerning the injury elimination level, recitals (115) to (118) of the provisional Regulation are hereby confirmed.

2. Form and level of the duties

(40) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since for all the exporting producers concerned the injury margins were found to be higher than the dumping margins.

(41) Regarding the form of the measures, the Community industry required that a minimum price based on the injury elimination level should be imposed. However, since the level of the definitive anti-dumping duty is based on the dumping margins found, as mentioned in the above recital, the imposition of the definitive anti-dumping duty in form of ad valorem duties is maintained.

(42) On the basis of the above, the definitive duties are as follows:

Company	Dumping margin
Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou	<i>De minimis</i>
Changmao Biochemical Engineering Co., Ltd, Changzhou City	10.1%
Ninghai Organic Chemical Factory, Ninghai	4.7%
All other companies	34.9%

(43) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(44) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of

new production or sales entities) should be addressed to the Commission³ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

- (45) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporters, but also to those companies which did not have any exports during the IP. However, the latter companies are invited, when they fulfil the requirements of Article 11(4) of the basic Regulation, second paragraph, to present a request for a review pursuant to that Article in order to have their situation examined individually.

Definitive collection of provisional duties

- (46) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 1259/2005, should be definitively collected to the extent of the amount of the definitive duties imposed. As definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive duty rate of anti-dumping duties shall be released.
- (47) In order to minimise the risks of circumvention due to the high difference in the amounts of duties, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following:
- (48) The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation.. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.
- (49) In addition, the Commission will monitor the export flows as well as the relevant CN code for salts and esters of TA. Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, or should the imports declared under the relevant CN code for salts and esters increase dramatically, the individual measures concerned might be considered as being likely insufficient to counteract the injurious dumping found. Consequently, and provided that the requisite elements are met, the Commission may initiate an interim review pursuant to Article 11(3) of the basic Regulation. This review may, *inter alia*, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty.

³ European Commission
Directorate-General for Trade
Direction B, office J-79 5/16
1049 Brussels/Belgium

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tartaric acid, falling within CN code 2918 12 00, originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable, before duty, to the net free-at-Community-frontier price shall be:

Company	Anti-Dumping Duty	TARIC Additional Code
Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou, People's Republic of China	0.0%	A687
Changmao Biochemical Engineering Co., Ltd, Changzhou City, People's Republic of China	10.1%	A688
Ninghai Organic Chemical Factory, Ninghai, People's Republic of China	4.7%	A689
All other companies	34.9%	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1259/2005 on imports of tartaric acid, falling within CN code 2918 12 00, originating in the People's Republic of China shall be definitively collected, in accordance with the rules set out below. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released.

Article 3

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*

Annex

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an official of the company, in the following format:

- (1) The name and function of the official of the company which has issued the commercial invoice.
- (2) The following declaration: “I, the undersigned, certify that the [volume] of tartaric acid sold for export to the European Community covered by this invoice was manufactured by [company name and address] [TARIC additional code] in [country concerned]. I declare that the information provided in this invoice is complete and correct.”

Date and signature