



**COUNCIL OF
THE EUROPEAN UNION**

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**ANTIDUMPING 49
COMER 140**

PROPOSAL

from:	European Commission
dated:	8 June 2012
No Cion doc.:	COM(2012) 284 final
Subject:	Proposal for a Council Regulation amending Regulation (EU) 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2012) 284 final



EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION

**amending Regulation (EU) 349/2012 imposing a definitive anti-dumping duty on imports
of tartaric acid originating in the People's Republic of China**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation') in the interim review proceeding concerning the anti-dumping duty in force in respect of imports of tartaric acid originating in the People's Republic of China ('PRC').

- **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**

A definitive anti-dumping duty on imports of tartaric acid originating in the PRC was imposed by Council Regulation (EC) No 130/2006². This duty was amended by Council Implementing Regulation (EU) No 332/2012³ and extended for a further five years by Council Implementing Regulation (EU) No 349/2012⁴.

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

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

Interested parties concerned by the proceeding 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.

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 23, 27.1.2006, p. 1.

³ OJ L 108, 20.4.2012, p. 1

⁴ OJ L 110, 24.4.2012, p. 3

The basic Regulation does not provide for 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 29 July 2011 the Commission announced an interim review of the anti-dumping duty in force in respect of imports of tartaric acid originating in the PRC by a notice ('notice of initiation') published in the *Official Journal of the European Union*. This was following a request for review limited to dumping and limited to two producers of tartaric acid in the PRC, namely Ninghai Organic Chemical Factory, Ninghai and Changmao Biochemical Engineering Co., Ltd., Changzhou.

The investigation found the continued existence of dumping.

Therefore, it is suggested that the Council adopt the attached proposal for a Regulation in order to amend the existing measures, which should be published in the *Official Journal of the European Union* by 28 July 2012 at the latest.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

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

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, 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:

The basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implications for the Union budget.

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 349/2012 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 on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁵ ('the basic Regulation'), and in particular Articles 9 and 11(3), (5) and (6) thereof,

Having regard to the proposal submitted by the European Commission ('Commission') after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

- (1) In 2006, the Council imposed by Regulation (EC) No 130/2006⁶ a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China ('PRC' or 'the country concerned') ('the original anti-dumping measures'). This Regulation was amended by Council Regulation (EC) No 150/2008.⁷ In 2012, the Council amended the measures by Implementing Regulation (EU) No. 332/2012⁸ and extended the measures in force for a further five years by Implementing Regulation (EU) No. 349/2012⁹.

2. Initiation of an interim review

- (2) A request for review was lodged by the following producers in the Union: Distillerie Bonollo SpA, Industria Chimica Valenzana SpA, Distillerie Mazzari SpA, Caviro Distillerie Srl and Comercial Quimica Sarasa s.l. ('the applicants').
- (3) The review request was limited in scope to the examination of dumping as far as two Chinese exporting produces were concerned, namely Changmao Biochemical Engineering Co., Ltd, Changzhou, and Ninghai Organic Chemical Factory, Ninghai. The request alleged that the continued imposition of measures at the existing level, which was based on the level

⁵ OJ L 343, 22.12.2009, p. 51.

⁶ OJ L 23, 27.1.2006, p. 1.

⁷ OJ L 48, 22.2.2008, p. 1.

⁸ OJ L 108, 20.4.2012, p.1

⁹ OJ L 110, 24.4.2012, p.3

of dumping previously established, appeared to be no longer sufficient to counteract dumping, given that both companies should be denied Market Economy Treatment ('MET').

- (4) Having determined that the Commission had at its disposal sufficient *prima facie* evidence for the initiation of an interim review, and after consulting the Advisory Committee, the Commission announced on 29 July 2011, in a notice published in the *Official Journal of the European Union*¹⁰ ('the notice of initiation'), the initiation of an interim review limited to dumping pursuant to Article 11(3) of the basic Regulation.

3. Investigation

3.1. Investigation period

- (5) The investigation concerning dumping covered the period from 1 July 2010 to 30 June 2011 ('the review investigation period' or 'RIP').

3.2. Parties concerned by this investigation

- (6) The Commission officially advised the two exporting producers in the country concerned and the authorities of the country concerned of the initiation of the interim review.
- (7) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

3.3. Questionnaire replies and verifications

- (8) The Commission sent questionnaires to the two exporting producers named in the request for review and to producers in the analogue country, Argentina.
- (9) Questionnaire replies were received from the two Chinese exporting producers, and also from the cooperating producer in the analogue country.
- (10) In order to allow the two exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms for this purpose. Claims for MET, or for IT in case the investigation established that they do not meet the conditions for MET, were received from both of them.
- (11) The Commission sought and verified all the information deemed necessary for a determination of dumping and carried out verifications at the premises of the following companies:

(a) *Exporting producers in the PRC*

- Ninghai Organic Chemical Factory, Ninghai
- Changmao Biochemical Engineering Co., Ltd., Changzhou

(b) *Exporting producers in the analogue country*

- TARCOL S.A., Buenos Aires

¹⁰ OJ C 223, 29.7.2011, p.16.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (12) The product concerned by this review is the same as the one in the original investigation, namely tartaric acid, excluding D-(-)- tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, originating in the PRC, currently falling within CN code ex 2918 12 00 ('the product concerned').
- (13) 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 production in the Union or, via chemical synthesis from petrochemical compounds, as is the case with production in the PRC. Only L+ tartaric acid is manufactured from the by-products of wine making. Synthetic production allows the manufacture of both L+ and DL tartaric acid. Both types are product concerned and have overlapping uses.

2. Like product

- (14) As in the previous investigation, it was considered that the tartaric acid produced in the PRC and exported to the EU, the tartaric acid produced and sold on the domestic market of the analogue country (Argentina) and the tartaric acid manufactured and sold in the EU by the Union producers have the same basic physical and chemical characteristics, and the same basic uses. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Market Economy Treatment ('MET')

- (15) Both companies named in the request for review claimed Market Economy Treatment ('MET'). Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (16) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:
- (1) Business decisions and costs are made in response to market conditions and without significant State interference;
 - (2) Accounting records are independently audited in line with international accounting standards and applied for all purposes;
 - (3) There are no significant distortions carried over from the former non-market economy system;
 - (4) Legal certainty and stability is provided by bankruptcy and property laws;
 - (5) Currency exchanges are carried out at the market rate.

- (17) Both producers in the PRC requested MET pursuant to Article 2(7)(c) of the basic Regulation. Each MET application was analysed, and on-spot investigations were carried out at the premises of these co-operating companies.
- (18) For both companies, MET was denied under Criterion 1 of Article 2(7)(c) based on evidence that the price of the basic raw material, benzene, was distorted. A comparison of domestic prices in China, using the purchase prices of one cooperating producer as a source, against prices in other market economy countries showed a price difference of between 19% and 51% during the investigation period. The PRC imposes an import tariff on benzene of 40% (although this was not in fact in force during the RIP) and also does not refund any of the 17% VAT levied on its export. Distortions were also found in the price of the intermediate raw material, maleic anhydride, purchased by the other cooperating producer using their purchases as a source.
- (19) MET was also denied to one company under Criteria 2 and 3 due to evidence of depressed land use right prices and also overvaluation of the company's assets for the purpose of guaranteeing a loan from a State-owned bank.
- (20) Both companies disputed the findings of the Commission after they were disclosed to them. However neither company could explain the low price of benzene on the Chinese market. The company referred to in recital (19) above provided some documents to dispute our findings regarding the land use right prices and the valuation of their assets. However as these documents were requested during the inspection and were not provided, it was therefore decided that this information could not be verified or relied upon.
- (21) MET is therefore denied to both companies.
- (22) However both companies meet the requirements set out in Article 9(5) of the basic Regulation and are therefore entitled to an individual anti-dumping duty using their own export prices.

2. Analogue country

- (23) Pursuant to Article 2(7)(a) of the basic Regulation normal value was determined on the basis of the price or constructed value in an appropriate market economy third country ('the analogue country'), or the price from the analogue country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.
- (24) As in the original investigation, Argentina was proposed in the notice of initiation as an appropriate analogue country for the purposes of establishing normal value pursuant to Article 2(7)(a) of the basic Regulation. Following the publication of the notice of initiation, one company in India and one company in Australia were identified as alternative possible producers in a market economy third country. However neither of the two companies responded to the questionnaire sent to them.
- (25) One producer of tartaric acid in Argentina cooperated with the investigation by replying to a questionnaire. The investigation showed that Argentina had a competitive market for tartaric acid with two competing local producers and imports from third countries. The production volume in Argentina constitutes more than 20% of the volume of Chinese exports of the product concerned to the EU. The Argentinean market was therefore deemed sufficiently representative for the determination of normal value for the PRC.

- (26) It is therefore concluded, as in the previous investigation, that Argentina constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3. Normal Value

- (27) Normal value was established on the basis of the information received from the cooperating producer in the analogue country. Although the analogue country producer had domestic sales of the product concerned, given the difference in the production method between Argentina and the PRC which has a significant impact on prices and costs, it was decided to construct normal value, rather than use these domestic sales prices. The cost of raw material in Argentina was replaced by an average market price for benzene and an adjustment made to SG&A in Argentina to better reflect the domestic market in China.
- (28) Normal value for L+ Tartaric Acid (which is manufactured by the Argentinian producer) was therefore constructed from the cost of production in Argentina of L+ Tartaric Acid, taking into account the difference in production method between Argentina and the PRC.
- (29) Given that the Argentinian producer did not manufacture DL tartaric acid, a normal value was also constructed using the difference in price found between the two product types.

4. Export price

- (30) Export prices were determined based on the actual price paid or payable by the first independent customer in the Union for both Chinese exporting producers.

5. Comparison

- (31) For the purposes of ensuring a fair comparison between the normal value and the export price in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to certain differences in transport, insurance and indirect taxation, where these were proved to affect prices and price comparability.

6. Dumping margins

- (32) For both companies the weighted average normal value for each product was compared with the weighted average export price for the same product type, as provided for under Article 2(11) of the basic Regulation.
- (33) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price duty unpaid are:

Company	Dumping margin
Changmao Biochemical Engineering Co., Ltd, Changzhou	13.1%
Ninghai Organic Chemical Factory, Ninghai.	8.3%

7. Lasting nature of changed circumstances

- (34) The request for review alleged that the two Chinese exporting producers should no longer be granted MET and that this change was of a lasting nature. Given the reasons for denial of

MET it can be considered that the conclusions of this review are of a lasting nature. Evidence shows that the distortion in the price of benzene in China was in existence prior to the RIP and there is no evidence to show that the Chinese government has, or will, remove such distortions.

- (35) For the company-specific reasons set out in recital (19) these are also of a lasting nature, as they affect the company's costs and decisions over a significant period of time. They were not events that would have affected the original investigation in which MET was granted to this company.

D. AMENDMENT OF THE ANTIDUMPING MEASURES IN FORCE

- (36) In light of the above, it is considered that the present anti-dumping review should amend the level of the existing measures in force on imports of tartaric acid from the People's Republic of China.
- (37) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be amended. They were also granted a period within which they could make representations subsequent to this disclosure.
- (38) One Chinese company replied to the disclosure again disputing the findings regarding the denial of Market Economy Treatment on the grounds of price distortion of the main raw material. However they provided no new evidence to support their assertions and their arguments were therefore rejected. They also requested further information on the adjustments referred to in recital (27) but this had to be rejected as it would be impossible to do so without disclosing the production methods and costs of the sole producer in Argentina.
- (39) The Union Industry responded to the disclosure by contesting the use of a constructed normal value rather than domestic sales prices in the analogue country, and also the adjustments referred to above to the constructed normal value to take account of the difference in raw materials and production process between Argentina and China.
- (40) As regards the use of a constructed normal value rather than prices from Argentina, this cannot be considered a change of methodology under Article 11(9) of the basic Regulation. In the original investigation both Chinese companies were granted MET and therefore normal value was taken from their own domestic prices. Now that MET has been denied to both companies the same methodology could no longer be used.
- (41) The Union Industry further claimed that the Commission should have used the methodology set out in the original investigation to calculate the residual duty for China to calculate the individual margins for the two exporters concerned by this review. This argument was rejected as the residual duty was calculated for companies that did not cooperate with the original investigation. It is therefore not comparable to calculating an individual duty for a cooperating exporter that has been denied Market Economy Treatment.
- (42) As regards the adjustments made to the normal value referred to above, these were necessary to ensure a fair comparison between the export price of a synthetically produced tartaric acid, and a normal value based on a natural production process. Attempting the same calculation using domestic sales prices in Argentina and then adjusting the normal value and/or export price under Article 2(10) of the basic Regulation would not have provided for a fair comparison. These arguments were therefore rejected.

E. UNDERTAKINGS

- (43) One exporting producer in the PRC offered a price undertaking in accordance with Article 8(1) of the basic Regulation. The product concerned is not suitable for a fixed price undertaking due to the volatility of the export price. In order to overcome this problem, the exporting producer offered an indexation clause, but without specifying how this indexation would be calculated. They also offered an indexation based on the distorted domestic benzene price in China, which could not be accepted.
- (44) Moreover, this exporting producer produces different types of other chemical products and may sell these products to common customers in the European Union via related trading companies. This would create a serious risk of cross compensation and would make effective monitoring extremely difficult.
- (45) Furthermore, there are different types of the product concerned which are not easily distinguishable and have a considerable difference in price. The different MIPs proposed by the exporting producer would therefore render monitoring impracticable. On the basis of the above it was concluded that the undertaking offers cannot be accepted,

HAS ADOPTED THIS REGULATION:

Article 1

The Table in Article 1(2) of Council Implementing Regulation (EU) No 349/2012 shall be amended to read as follows:

Company	Anti-dumping duty	TARIC additional code
Changmao Biochemical Engineering Co., Ltd, Changzhou	13.1%	A688
Ninghai Organic Chemical Factory, Ninghai	8.3%	A689
All other companies (except Hangzhou Bioking Biochemical Engineering Co. Ltd, Hangzhou – TARIC additional code A687).	34.9%	A999

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