



EUROPEAN COMMISSION

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2012/0053 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 130/2006 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, and excluding company Hangzhou Bioking Biochemical Engineering Co., Ltd from the definitive measures

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters, in relation with the expiry review proceeding concerning the anti-dumping duty in force in respect of 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 Council Regulation (EC) No 1515/2001 and is the result of a review of Council Regulation (EC) No 130/2006 which was carried out in light of the report of the Appellate Body of the WTO in Mexico — Beef and Rice¹.

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

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 130/2006 on imports of tartaric acid originating in the People's Republic of China (OJ L 23, 27.1.2006, p. 1.), as last amended by Council Regulation (EC) No 150/2008 (OJ L 48, 22.2.2008, p.1).

- **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 had the possibility to defend their interests during the investigation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of Council Regulation (EC) No 1515/2001. This Regulation does not foresee a general impact assessment.

¹ Mexico — Definitive Anti-dumping Measures on Beef and Rice, Report of the Appellate Body, WT/DS295/AB/R, 29 November 2005

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 26 January 2011, the Commission initiated, pursuant to Article 2(3) of Regulation (EC) No 1515/2001, a review of Council Regulation (EC) No 130/2006 in relation with an expiry review of the anti-dumping measures applicable to imports of tartaric acid originating in the People's Republic of China.

The review investigation found that, in light of the report of the Appellate Body of the WTO in Mexico — Beef and Rice, the continued imposition of the measures imposed on Hangzhou Bioking by Council Regulation (EC) No 130/2006 was no longer appropriate and Council Regulation (EC) No 130/2006 should be amended accordingly.

It is therefore proposed that the Council adopts the attached proposal for a Regulation in order that the company Hangzhou Bioking is excluded from the scope of Council Regulation (EC) No 130/2006, which should be published in *Official Journal of the European Union* by the 24 April 2012.

- **Legal basis**

Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the 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 leaves no scope for national decision.

Indication of how the 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 above-mentioned basic Regulation does not foresee alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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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 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters², and in particular Article 2(1) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 130/2006³, the Council imposed a definitive anti-dumping duty, ranging from 0% to 34.9%, on imports of tartaric acid ('TA') originating in the People's Republic of China ('China'). The rate of the definitive anti-dumping duty imposed on TA produced by the Chinese exporting producer Hangzhou Bioking Biochemical Engineering Co., Ltd. ('Hangzhou Bioking') was 0%.

2. Initiation of an expiry review and of a review of existing measures on Hangzhou Bioking

(2) Following the publication of a notice of impending expiry⁴ of the anti-dumping measures in force, the Commission received on 27 October 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped

² OJ L 201, 26.7.2001, p. 10.

³ OJ L 23, 27.1.2006, p. 1.

⁴ OJ C 211, 4.8.2010, p. 11.

imports from countries not members of the European Community⁵ ('the basic Regulation').

- (3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 26 January 2011 the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, by a notice published in the *Official Journal of the European Union*⁶ ('Notice of initiation').
 - (4) In the Notice of initiation, the Commission also announced the initiation of a review of existing measures on Hangzhou Bioking pursuant to Article 2(3) of Regulation (EC) No 1515/2001 in order to allow for any necessary amendment of Regulation (EC) No 130/2006 in the light of the WTO Appellate Body report entitled 'Mexico – Definitive Anti-Dumping Measures on Beef and Rice'⁷. This report found in paragraphs 305 and 306 that an exporting producer not found to be dumping in an original investigation has to be excluded from the scope of the definitive measure imposed as a result of such investigation and cannot be made subject to administrative and changed circumstances review.
3. Initiation of a new proceeding
- (5) On 29 July 2011, the Commission announced, by a notice published in the *Official Journal of the European Union*⁸, the initiation of an anti-dumping investigation pursuant to Article 5 of the basic Regulation concerning imports into the European Union of tartaric acid originating in China, limited to Hangzhou Bioking.
4. Exclusion of Hangzhou Bioking from the definitive anti-dumping measures imposed by Regulation (EC) 130/2006
- (6) Since Hangzhou Bioking should be excluded from the definitive anti-dumping measure imposed by Regulation (EC) No 130/2006 in order not to make Hangzhou Bioking fall under two anti-dumping proceedings at the same time,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 130/2006 is hereby amended as follows:

In Article 1(2), in the table, the entry concerning Hangzhou Bioking Biochemical Engineering Co., Ltd shall be deleted and the entry 'All other companies' shall be replaced by the entry 'All other companies (except Hangzhou Bioking Biochemical Engineering Co., Ltd – TARIC additional code A687)'.

⁵ OJ L 343, 22.12.2009, p. 51.

⁶ OJ C 24, 26.1.2011, p. 14.

⁷ WT/DS295/AB/R, 29 November 2005.

⁸ OJ C 223, 29.7.2011, p. 11.

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*