Commission Implementing Regulation (EU) 2016/1247 of 28 July 2016 Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China

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Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 ('the basic Regulation') on protection against dumped imports from countries not members of the European Union[(1)], and in particular Article 9(4) thereof,

Whereas:

1. **PROCEDURE**

1.1. **Provisional measures**

(1) On 26 February 2016, by Commission Implementing Regulation (EU) 2016/262 ('the provisional Regulation')[(2)] the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China ('the country concerned' or 'the PRC') under Article 7(4) of the basic Regulation.

(2) The investigation was initiated on 30 May 2015 following a complaint lodged on 16 April 2015 by Ajinomoto Sweeteners Europe SAS ('ASE'), the sole producer of aspartame in the Union. On 15 October 2015 ASE was purchased by Hyet Holding BV and consequently was renamed to Hyet Sweet SAS ('Hyet'). Hyet represents 100 % of Union production of aspartame and constitutes the Union industry within the meaning of Article 4(1) of the basic Regulation.

(3) As set out in recital (18) of the provisional Regulation the investigation of dumping and injury covered the period from 1 April 2014 to 31 March 2015 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

1.2. **Subsequent procedure**

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), several interested parties made written submissions making known their

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views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(5) A hearing took place upon request from the Chinese Chamber of International Commerce, with the presence of representatives of one exporting producer, Sinosweet Co., Ltd. The main points discussed were the possibility of obtaining a price undertaking, as well as other requests and comments on the dumping calculations. The comments were later formalized in a submission, and they are addressed in the present Regulation.

(6) The intervention of the Hearing Officer in trade proceedings was requested by one of the exporting producer, Changmao Biochemical Engineering Co., Ltd The main points discussed were the reasons for refusal market economy treatment, the choice of the analogue country, the need for adjustments when establishing price undercutting and the alleged absence of causal link between the material injury and the dumped imports.

(7) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the provisional findings accordingly.

(8) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of aspartame originating in the PRC and definitely collect the amounts secured by way of provisional duty ('the definitive disclosure'). All parties were granted a period within which they could make comments on the definitive disclosure.

(9) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.3. **Sampling**

(10) In the absence of comments concerning sampling of importers, recitals (8) to (10) of the provisional Regulation are confirmed.

(11) In the absence of comments concerning sampling of exporting producers in the PRC, recitals (11) and (12) of the provisional Regulation are confirmed.

(12) In the absence of comments concerning individual examination, recital (13) of the provisional Regulation is confirmed.

1.4. **Market economy treatment ('MET') claim forms**

(13) In the absence of comments concerning the claims for market economy treatment ('MET'), recital (14) of the provisional Regulation is confirmed.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(14) The product concerned, as defined and further clarified in recitals (19) to (22) of the provisional Regulation is aspartame (N-L-α-Aspartyl-L-phenylalanine-1-methyl ester, 3-amino-N-(α-carbomethoxy-phenethyl)-succinamic acid-N-methyl ester), CAS

RN 22839-47-0, originating in the PRC, currently falling within CN code ex 2924 29 98 (‘the product concerned’ or ‘the like product’).

(15) Following the provisional disclosure the Union industry reiterated its concern for possible circumvention of measures via mixtures and preparations containing aspartame. The Union industry also claimed that there would be no difficulties with implementation if duties on such mixtures and preparations were imposed. As a way of example it referred to another investigation concerning monosodium glutamate in the United States.

(16) In reply to this comment it is noted that a recent investigation concerning a similar product at definitive stage concluded that a number of Member States and Switzerland encountered considerable implementation difficulties due to the inclusion of such mixtures and preparations in the product concerned. As consequence, it was decided to remove them at the definitive stage from the product definition. Given the similarities in the products (sweeteners with same applications in the food, beverage and pharmaceuticals sectors) it is highly likely that similar problems would occur in the present case.

(17) More importantly, the findings of the investigation did not support the claim that the risk of circumvention via mixtures and preparations were high. Cooperating users confirmed that each downstream product and within each downstream product the type/brand requires different proportions of different sweeteners therefore separate importation for each mixture would be completely impracticable. Also, importation of aspartame in liquid form (as mixture with water) would require completely different and significantly more expensive packaging and transportation arrangements.

(18) Based on the above, the product definition in recital (22) of the provisional Regulation is maintained.

2.2. **Like Product**

(19) In the absence of comments concerning the like product, recital (23) of the provisional Regulation is confirmed.

3. **DUMPING**

3.1. **Normal Value**

3.1.1. *Market economy treatment (‘MET’)*

(20) As mentioned in recital (26) of the provisional Regulation, the MET claim submitted by one sampled exporting producer was denied because the investigation showed that it did not comply with criteria 2 and 3 of Article 2(7)(c) of the basic Regulation. The party reiterated claims that it fulfils these criteria. With regard to criterion 2, however, it did not provide any new evidence or arguments such as to re-examine the provisional assessment.

(21) With regard to criterion 3, the party referred to a recent General Court's judgment[(3)] where the Court disagreed with the Commission's tax incentives analysis in

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relation to that criterion. It is noted that the judgment has not entered into force yet. As recalled in recital (31) of the provisional Regulation, each case is assessed on its own merits, namely on the basis of all the facts available to the Commission. In the absence of further arguments and new facts in relation to the substance of the concrete analysis of the tax incentives in the present case, the conclusions could not be revisited.

(22) During the meeting with the Hearing Officer the party reiterated the claim addressed in recital (29) of the provisional Regulation that the benefit obtained from preferential tax regimes grants should be considered as subsidies and thus the existence of subsidy should not be classified as a distortion carried over the former non-market economy system.

(23) As recalled in recital (32) of the provisional Regulation, the purpose of the MET assessment is different from that of an anti-subsidy investigation. Whilst the MET assessment aims at establishing whether or not a company operates under market-economy conditions on the basis of the provisions of Article 2(7)(c) of the basic Regulation, the anti-subsidy investigation aims at establishing whether or not a company has benefited from countervailable subsidies on the basis of the provisions of Regulation on protection against subsidised imports from non-EU countries[(4)]. These two issues thus have their own legal basis and have to be dealt with separately. For the MET, one of the relevant aspects to assess criterion 3 is whether or not the production costs and the financial situation of the investigated firms are subject to significant distortions carried over from the former non-market economy system and not whether a company benefited from countervailable subsidies.

(24) In any event, recital (29) of the provisional Regulation explains that the said exporting producer failed to fulfil criterion 3, not only because of the tax incentives it received, but also because of the benefit it obtained on the purchase of its land-use rights. With regard to the land use rights, the party claimed that the set of documentation submitted in the current case was identical to that submitted in two previous investigations where it eventually obtained MET. However, the conclusion that criterion 3 was not fulfilled was not only based on documents submitted in previous investigations but also on new evidence collected during the current investigation, namely a property valuation report established by an independent auditor. This document is annexed to a prospectus published on the Hong-Kong stock exchange for the attention of potential investors. The report shows that there is marked difference between the price paid by the exporting producer for its land use right and the market value. On that basis, it was considered that the party did not obtain the land-use right at market value and criterion 3 was not considered to be fulfilled.

(25) On the basis of above, the claim of the exporting producer was rejected and recitals (24) to (37) of the provisional Regulation are confirmed.

3.1.2. *Choice of the analogue country*

(26) Following the provisional disclosure, three interested parties raised concerns as to the choice of Japan as an analogue country, and in particular the producer

Ajinomoto Co., Japan ('Ajinomoto Japan'), the parent company of the complainant and the establishment of the normal value for the PRC on the basis of this country.

(27) Parties claimed in particular that Ajinomoto Japan enjoys a monopolistic position on its domestic market where it is able to command a significantly higher price compared with other markets, such as Korea or the PRC where competition is taking place. During the hearing held by the Hearing officer one party claimed that Ajinomoto Japan holds a dominant position in its domestic market, with basically 100 % market share and there is thus no imports and no competition in Japan. Moreover, parties consider that Japan is clearly not a suitable analogue country as the differences between the Japanese and the Chinese markets are obvious and are shown by the high level of the dumping margins found in the provisional Regulation. They also claimed that the presence of several domestic producers makes the domestic Chinese market more competitive, and that the profit recorded by Chinese producers on their domestic market is substantially lower than the one reported by the analogue country producer.

(28) Another party claimed that the choice of Japan as an analogue country is the worst possible scenario and that the result of the comparison between Japanese prices and Chinese prices show that it is not a realistic or reasonable choice.

(29) At the initial stage of the investigation, the Commission sought the cooperation from other third countries in order to select an appropriate analogue country. The investigation revealed that the world production of aspartame was concentrated in few countries: the PRC, France, Japan and Korea. The known producers in Korea and Japan were contacted. The only known Korean producer refused to cooperate. As discussed at the provisional stage, only the producer in Japan agreed to cooperate and Japan was thus the only market economy third country available as analogue country. Its data was used to establish the normal values in the provisional Regulation.

(30) The Commission notes that the choice of Japan is contested by several parties, in particular for the high domestic market share of Ajinomoto Japan and the alleged limited competition in that market. However, the parties did not provide any evidence in support of their claims in this regard. The investigation did not show that Japan was not an open market because of import restrictions, such as high customs duties or other tariffs and quantitative restrictions and in fact revealed that imports of aspartame are reported into the Japanese market, including from the PRC and Korea.

(31) Nevertheless, in order to assess the appropriateness of Japan as an analogue country for the PRC, the Commission further examined the competition conditions in which the prices for the like product are formed in Japan. As already noted, only one producer is active on the Japanese market competing with imports from the PRC and Korea. More importantly, the profit margins of the Japanese producer achieved on customers were found to vary greatly between types and sizes of customers. The investigation did not bring to light any rational reason for the wide difference between profit margins. In particular, it was not found that the profit margin variations could be explained by the quantity sold, for instance. Therefore, in view of this outstanding issue,