Commission Implementing Regulation (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China

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THE EUROPEAN COMMISSION,

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 Community[(1)] ('the basic Regulation'), and in particular Article 7(4) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 30 May 2015, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of aspartame originating in the People's Republic of China ('the country concerned' or 'the PRC'). The Commission initiated the investigation on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union*[(2)] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 16 April 2015 by Ajinomoto Sweeteners Europe SAS ('the complainant'). The complainant is the sole producer of aspartame in the Union. The complainant thus represents the total Union production of aspartame. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Interested parties

(3) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, the known exporting producers and the Chinese authorities, the known importers, users, traders and distributors known to be concerned about the initiation of the investigation and invited them to participate.

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(4) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(5) In the context of the initiation of the investigation, none of the interested parties requested a hearing before the Commission services and/or with the Hearing Officer in trade proceedings.

1.3. **Analogue country producers**

(6) In the Notice of Initiation, the Commission informed interested parties that it envisaged Japan or South Korea as third market economy countries within the meaning of Article 2(7)(a) of the basic Regulation. Therefore, the Commission informed producers in Japan and South Korea about the initiation and invited them to participate. Interested parties had an opportunity to comment and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. **Sampling**

(7) In its Notice of Initiation, the Commission stated that it might sample exporting producers and importers of the product concerned in the Union in accordance with Article 17 of the basic Regulation.

1.4.1. *Sampling of importers*

(8) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known importers to provide the information specified in the Notice of Initiation.

(9) None of the known importers contacted by the Commission replied to the questionnaire in the Notice of Initiation for the selection of a sample. Sampling was therefore not applicable in this investigation.

(10) Two distributors, namely traders who buy and resell aspartame solely produced by the Union producer, made themselves known and provided a reply to the questionnaire.

1.4.2. *Sampling of exporting producers in the PRC*

(11) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the mission of the PRC to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(12) Six exporting producers in the country concerned provided the requested information and agreed to be included in a sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. On this basis, the three sampled

Chinese exporting producers or groups that agreed to cooperate represent about 90 % of the total imports of aspartame originating in the PRC. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made.

1.4.3. *Individual examination*

(13) Three non-sampled exporting producers in the country concerned requested individual examination under Article 17(3) of the basic Regulation and were provided with the claim form. However, none of these three exporting producers provided the completed claim form within the given deadlines. Therefore, the Commission considers that the claims for individual examination made by the three non-sampled exporting producers are not valid.

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

(14) For the purposes of Article 2(7)(b) of the basic Regulation, the Commission sent MET claim forms to the six cooperating exporting producers in the country concerned that wished to apply for an individual dumping margin. Two of the six cooperating exporting producers submitted a completed MET claim form but one of them subsequently withdrew its request.

1.6. **Replies to the questionnaire**

(15) The Commission sent questionnaires to the Union producer, the cooperating exporting producers in the country concerned, one producer in Japan, chosen as the analogue country as explained in recital 45 below, the known users and to the two distributors who made themselves known after the publication of the notice of initiation.

(16) Questionnaire replies were received from the Union producer, the three sampled exporting producers in the country concerned, one producer in Japan ('the analogue country'), two distributors and five users.

1.7. **Verification visits**

(17) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) Union producer:

— Hyet Sweet SAS (previously Ajinomoto Sweeteners Europe SAS), Gravelines, France.

(b) Users:

— Princes Limited, Liverpool, the UK,

— Wrigley Company Limited, Plymouth, the UK.

(c) Exporting producers in the country concerned:

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— the Sinosweet group ('Sinosweet'), including:
  — Sinosweet Co., Ltd, Yixing city, Jiangsu Province, the PRC, and
  — Hansweet Co., Ltd, Yixing city, Jiangsu Province, the PRC,
— the Niutang group ('Niutang'), including:
  — Nantong Changhai Food Additive Co., Ltd, Nantong city, Jiangsu Province, the PRC, and
  — Changzhou Niutang Chemical Plant Co., Ltd, Niutang town, Changzhou city, Jiangsu Province, the PRC,
— Changmao Biochemical Engineering Co., Ltd, Changzhou city, Jiangsu Province, the PRC ('Changmao').

(d) Importers related to the exporting producers:
— Niutang UK Co., Ltd, Telford, Shropshire, the UK.

(e) Producer in analogue country
— Ajinomoto Co., Tokyo, Japan.

1.8. **Investigation period and period considered**

(18) The investigation of dumping and injury covered the period from 1 April 2014 to 31 March 2015 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from January 2011 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(19) The product concerned, as defined in the Notice of Initiation, 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, as well as aspartame originating in the PRC and contained in preparations and/or mixtures comprising also other sweeteners and/or water, currently falling within CN code(s) ex 2924 29 98, ex 2106 90 92, ex 2106 90 98, ex 3824 90 92 and ex 3824 90 93.

(20) Aspartame is a sweetening ingredient produced in the form of white, odourless crystals of various sizes with a taste profile similar to sugar but with an increased sweetness potency and considerably smaller caloric value. For this reason it is mainly used as a sugar substitute in the soft drink, food and dairy industries.

(21) The investigation showed that preparations and/or mixtures containing aspartame originating in the PRC were in fact not imported into the Union market during the investigation period. The Commission concluded that due to the lack of imports, preparations and mixtures should not be included in the definition of the product scope.

This clarification of the product definition has no bearing on the findings of dumping, injury, causation and Union interest.

(22) The definition of the product concerned should therefore be clarified as referring only to 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 'aspartame').

2.2. **Like product**

(23) The investigation showed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:

— the product concerned,

— the product produced and sold on the domestic market of the country concerned,

— the product produced and sold on the domestic market of Japan, which served as an analogue country, and

— the product produced and sold in the Union by the Union industry.

The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

3. **DUMPING**

3.1. **Normal value**

3.1.1. *Market economy treatment ('MET')*

(24) For the determination whether the criteria in Article 2(7)(c) of the basic Regulation are met, the Commission sought the necessary information by asking the exporting producers to fill in the MET claim form. One sampled exporting producer claimed MET and submitted the MET claim form within the deadline.

(25) The Commission verified the submitted information at the premises of the company concerned.

(26) The verification showed that the exporting producer did not comply with the criteria set forth in Article 2(7)(c) of the basic Regulation and therefore could not be granted MET, in particular shortcomings were found with regard to criteria 2 and 3.

(27) The Commission disclosed the detailed findings to the exporting producer concerned, to the authorities of the country concerned and to the Union industry. The company contested the findings of the Commission and provided written comments on the disclosure. The main substantial comments received are addressed below.

(28) Regarding criterion 2, the exporting producer reiterated that it has one clear set of independently audited accounting records, complying with the Hong Kong financial reporting standards.