Commission Implementing Regulation (EU) 2015/1963 of 30 October 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of acesulfame potassium 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)], and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) On 22 May 2015, by Commission Implementing Regulation (EU) 2015/787 ('the provisional Regulation'),[(2)] the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China ('the country concerned' or 'the PRC') as well as acesulfame potassium originating in the People's Republic of China contained in certain preparations and/or mixtures.

(2) The investigation was initiated on 4 September 2014 following a complaint lodged on 22 July 2014 by Celanese Sales Germany GmbH ('the complainant'). The complainant was formerly named Nutrinova Nutrition Specialties & Food Ingredients GmbH until its change in name on 1 August 2015. The complainant is the sole Union producer of acesulfame potassium (or 'Ace-K'), thus representing 100 % of the total Union production of Ace-K.

(3) As set out in recital 16 of the provisional Regulation the investigation of dumping and injury covered the period from 1 July 2013 to 30 June 2014 ('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

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

(5) The complainant requested a hearing with the Hearing Officer in trade proceedings ('Hearing Officer'). The hearing took place on 8 July 2015. The complainant contested several aspects of the provisional determinations, in particular with regard to the adaptations made respectively in the dumping and injury margin calculations.

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

(7) 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 Ace-K originating in the PRC and definitively 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. Upon request of the complainant, another hearing with the Hearing Officer was held on 22 September 2015.

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

1.3. **Sampling**

(9) In the absence of comments concerning the abandoning of sampling in view of the limited number of unrelated importers and exporting producers in the PRC that came forward, the provisional findings in recitals 7 to 11 of the provisional Regulation are confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(10) The product concerned, as defined in recital 17 of the provisional Regulation, was acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-dioxide; CAS RN 55589-62-3) originating in the People's Republic of China as well as acesulfame potassium originating in the People's Republic of China contained in certain preparations and/or mixtures, currently falling within CN codes ex 2106 90 92, ex 2106 90 98, ex 2934 99 90 (TARIC code 2934 99 90 21), ex 3824 90 92, ex 3824 90 93 and ex 3824 90 96.

(11) As explained in recital 18 of the provisional Regulation, Ace-K is used as a synthetic sweetener in a wide range of applications, for example in food, beverage, and pharmaceutical products.

(12) After imposition of provisional measures, the customs authorities of various Member States and of Switzerland expressed concerns on the implementation difficulties caused by the provisional inclusion of Ace-K in preparations and/or

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mixtures in the definition of the product concerned. The investigation showed that such preparations and/or mixtures containing Ace-K were in fact not imported 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 has no bearing on the findings of dumping, injury, causation and Union interest. While the Commission identified during the investigation certain activities related to the development of one mixture by the Union producer, the impact of those were excluded from the analysis already at the provisional stage due to their exceptional nature. Therefore, the clarification concerns only Ace-K in preparations and/or mixtures and does not materially affect the scope of the proceeding or the provisional findings on dumping and injury.

(13) In view of considerable implementation difficulties reported by the customs authorities, possible enforcement risks linked to the transformation of pure forms of Ace-K into preparations and/or mixtures did not justify the inclusion thereof. The inclusion of preparations and mixtures is therefore not appropriate.

(14) The definition of the product concerned should therefore be clarified as referring only to acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-dioxide; CAS RN 55589-62-3) originating in the People's Republic of China (‘the product under investigation’) currently falling within CN code ex 2934 99 90 (TARIC code 2934 99 90 21) (‘the product concerned’). Acesulfame potassium is also commonly referred to as Acesulfame K or Ace-K. Should provisional anti-dumping duties on such preparations and/or mixtures have been imposed, they should be released.

(15) The Commission did not receive any comments in this regard. The conclusions reached in recital 19 of the provisional Regulation are therefore confirmed.

3. DUMPING

3.1. Normal value

(16) None of the Chinese Ace-K producers claimed market economy treatment and therefore their domestic sales prices or cost of production could not be used for establishing normal value. During the investigation period, Ace-K was produced only in the PRC and the Union. The normal value could not therefore be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Union.

(17) Consequently, pursuant to Article 2(7)(a) of the basic Regulation, normal value had to be determined on ‘any other reasonable basis’.

(18) To that effect, the Commission used as starting point for establishing the normal value the price actually paid or payable in the Union for the like product, i.e. the Union sales price of the Union industry, and it then adapted that price to remove the effect of three elements that existed only for the Union industry and that reflected particular patterns of price formation as well as activities related to a very specific and different product developed by the complainant.

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(19) Indeed, the investigation had established in the price setting of the product concerned in the present case particular patterns relating to quantities and types of customers, quality differences as well as exceptional costs related to a new, very specific and different product developed only by the complainant. The Commission introduced therefore relevant adaptations to reflect those particular patterns and make the determination of the normal value on a reasonable basis.

(20) The complainant contested those adaptations to its prices for the purpose of establishing the normal value, claiming they are improper under the terms of Article 2(10) of the basic Regulation.

(21) The above comments require a clarification of the Commission's approach as compared to the one described in the provisional Regulation. Indeed, in reference to recitals 26 and 27 of the provisional Regulation, it should be made clear that the three adaptations described below in recitals 23 to 38 have been made as part of the determination of the normal value on 'any other reasonable basis' under Article 2(7)(a) of the basic Regulation. Thus, the question was not to perform an adjustment to a normal value for comparing with an export price, but rather to arrive at a normal value on a reasonable basis in the absence of an appropriate market economy third country which could be used as analogue country. Indeed, the Union industry prices were used only as a starting point in the process of establishing a reasonable normal value and the adaptations were necessary to arrive at such a reasonable normal value.

(22) The claim that there is no legal basis for these adaptations is therefore dismissed.

3.1.1. *Adaptation for level of trade*

(23) After provisional disclosure, the complainant, although agreeing that an adaptation was warranted because the export sales from China were made mainly to traders in the Union while the sales of the Union producer were mainly made to end users, questioned the magnitude of the adaptation made to arrive at a normal value at traders' level. Due to the limited presence of sales to distributors in the Union industry sales listing, those data could not be used for establishing an appropriate adaptation rate for these differences in level of trade and the adaptation rate was therefore provisionally calculated on the basis of the price difference between Chinese sales to traders and end users. The complainant contested that this was an appropriate basis and commented that the level of trade adaptation should have been determined by the gross margin realised by three large Union distributors in the food ingredients industry, each of which distributed Ace-K.

(24) The Commission accepted that, in this case, it is more appropriate to calculate the adaptation rate on the basis of gross margins obtained by relevant distributors. However, the methodology as proposed by the complainant presented flaws as only one of the distributors mentioned by the complainant cooperated and the data concerned all products traded by these importers, most of which are not product concerned. Therefore, the Commission adapted the proposed methodology in order to include data which was

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verified during the investigation and which concerned Ace-K only. To this end, the Commission determined the gross margin realised by all cooperating importers. This margin concerns the distribution of Ace-K only. This revised methodology resulted in a revised level of trade adaptation rate as compared to the one used at the provisional stage. That revised rate was applied and is reflected in the dumping margin in the table under recital 53 below.

(25) One Chinese exporting producer commented on the fact that the provisional rate for the adaptation for differences in level of trade was not disclosed to them. The rate is not anymore of relevance as it has been replaced as explained in recital 24 above. In any event, as the provisional adaptation had been based on data from two Chinese cooperating exporting producers with sales to both traders and users, the exact amount concerns confidential business data and cannot be disclosed.

3.1.2. *Adaptation for quality difference and the market perception thereof*

(26) Regarding the quality adaptation, the complainant first argued that there was no quality difference between the Chinese product and the like product produced by the Union producer and that therefore no adaptation was warranted. The complainant further questioned the representativeness of the evidence based on which the Commission reflected the quality differences and the perception thereof in the market in the establishment of the normal value.

(27) In this respect, it should be underlined that there were various submissions which indicated quality differences and/or market perceptions of quality differences between the Chinese product and the like product in the Union. In fact, information submitted by the complainant at complaint stage and on its own website clearly indicated that a quality difference existed. Some submissions, mostly limited of nature, include test reports and written submissions received from interested parties. Therefore, the representativeness of the evidence based on which it was concluded that indeed there was a real and/or perceived difference of quality between the imported product and Ace-K produced by the Union producer is deemed to be sufficient.

(28) Furthermore, the product specifications collected during the verification visits of the Union industry, Chinese producers and importers confirmed this quality difference as they revealed significant differences in terms of purity standards between the product sold by the complainant and the product sold by the exporting producers. An adaptation is therefore warranted.

(29) Moreover, as concerns the amount of the adaptation, this is based on the sole quantification of the quality difference in the limited file, provided in a submission by the Union industry itself. The Commission also found that the cost of testing and improving the quality standards of Ace-K sold by one Chinese producer, as verified on-the-spot at the premises of a cooperating importer, is approximately of the same amount as the adaptation made by the Commission, which confirmed that the amount of the adaptation is reasonable.