Commission Implementing Regulation (EU) 2015/787 of 19 May 2015 imposing a provisional anti-dumping duty on imports of acesulfame potassium 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

COMMISSION IMPLEMENTING REGULATION (EU) 2015/787

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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 7(4) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 4 September 2014, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union 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. The Commission initiated the investigation on the basis of Article 5 of Council Regulation (EC) No 1225/2009 ('the basic Regulation') and 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 22 July 2014 by Nutrinova Nutrition Specialties & Food Ingredients GmbH ('the complainant'), which is the sole producer of acesulfame potassium (or 'Ace-K') in the Union. The complainant thus represents the total Union production of Ace-K. 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

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informed the complainant, the known exporting producers and the Chinese authorities, known importers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(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.

1.3. **Analogue country producers**

(5) In the Notice of Initiation, the Commission informed interested parties that based on the information in the complaint, the product concerned is only known to be produced in the Union and the PRC. Interested parties were given the opportunity to comment on this. No comments were submitted.

(6) Nevertheless, the Commission contacted all nine third countries, for which Eurostat statistics showed exports into the Union of products falling within the same CN codes as the product concerned. The Commission asked for their assistance in identifying Ace-K producers and/or producers' associations. None of the third countries contacted could identify producers of Ace-K. Therefore, no production other than in the Union and in the country concerned was identified.

1.4. **Sampling**

(7) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

(a) *Sampling of importers*

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

(9) In view of the low number of replies, the Commission decided that sampling was not necessary.

(b) *Sampling of exporting producers in the PRC*

(10) 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.

(11) Four exporting producers in the country concerned provided the requested information and agreed to be included in the sample. One of these exporting producers did not have sales to the Union during the investigation period. Therefore, it could not be investigated and as a result, the number of cooperating companies was three. They accounted for all of the imports to the Union of the product concerned during the

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investigation period. In view of the low number of parties involved, the Commission decided that sampling was not necessary.

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

(12) For the purposes of Article 2(7)(b) of the basic Regulation, the Commission sent MET claim forms to the three cooperating exporting producers in the country concerned. None of the three cooperating exporting producers submitted a MET claim.

1.6. **Replies to the questionnaire**

(13) The Commission sent questionnaires to the Union producer, the three cooperating exporting producers in the country concerned, and all unrelated importers and users which expressed an interest in the investigation.

(14) Questionnaire replies were received from the Union producer, the three cooperating exporting producers in the country concerned, three unrelated importers and one user.

1.7. **Verification visits**

(15) 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:

Union producer

— Nutrinova Nutrition Specialties & Food Ingredients GmbH, Frankfurt, Germany;

Importers

— RFI Food Ingredients Handelsgesellschaft mbH, Düsseldorf, Germany,

— Brenntag Holding GmbH, Mülheim an der Ruhr, Germany,

— The Ingredient House Llc., Skillman, New Jersey, USA;

Users

— The Wrigley Company Limited, Plymouth, UK;

Exporting producers in the country concerned

— Anhui Jinhe Industrial Co., Ltd, Lai'an County, the PRC,

— Suzhou Hope Technology Co., Ltd, Zhangjiagang, the PRC,

— Anhui Vitasweet Food Ingredient Co., Ltd, Suzhou and Liyang, the PRC.

1.8. **Investigation period and period considered**

(16) 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 January 2011 to the end of the investigation period ('the period considered').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

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(17) The product concerned is 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 PRC as well as acesulfame potassium originating in the PRC contained in preparations and/or mixtures comprising also other sweeteners and/or water ('the product under investigation') currently falling within CN code(s) 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 ('the product concerned'). Acesulfame potassium is also commonly referred to as Acesulfame K or Ace-K.

(18) Ace-K is used as a synthetic sweetener in a wide range of applications, for example in food, beverage, and pharmaceutical products.

2.2. **Like product**

(19) Ace-K produced and sold in the Union by the Union industry was found to have the same basic physical and chemical characteristics as well as the same basic uses as Ace-K produced in the country concerned and sold for export to the Union. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. **DUMPING**

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

(20) Pursuant to Article 2(7)(b) of that Regulation the Commission determines normal value in accordance with Article 2(1) to (6) of the basic Regulation for the exporting producers in the PRC which comply with the criteria in Article 2(7)(c) of the basic Regulation and could therefore be granted MET.

(21) However, none of the cooperating exporting producers applied for MET as mentioned also in recital 12.

3.2. **Normal value**

(22) In accordance with Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the prices in an appropriate market economy third country (the 'analogue country'), or the price from such a third 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.

(23) In the absence of a third analogue country, as explained in recital 6, normal value was based on the prices actually paid or payable in the Union for the like product. The sales by the Union producer of those product types matching with those sold in the Union market by the Chinese cooperating producers during the investigation period were identified. The sales of the Union producer to independent customers were found representative when expressed as a proportion of the total volume of exports of the product concerned as well as per product type. The sales of these product types by the

Union producer were profitable. Their average Union sales price served as the normal value.

3.3. **Export price**

(24) The cooperating exporting producers exported to the Union directly to independent customers. Therefore, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.4. **Comparison**

(25) The Commission compared the normal value and the export price of the cooperating exporting producers on an ex-works basis.

(26) Where justified in order to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation.

(27) In particular, the Commission made an adjustment for differences in level of trade as it was established that the sole Union producer sold mainly to users while the Chinese producers sold mainly to traders. Secondly, based on several submissions an adjustment was made for the quality difference and the market perception of that difference between the Chinese Ace-K and the Union producer's Ace-K. In addition, the normal value was adjusted for certain exceptional research and development (R & D) as well as marketing expenses incurred by the Union producer during the investigation period. These expenses are discussed in further detail in recital 67.

3.5. **Dumping margins**

(28) For each of the cooperating exporting producers, the Commission compared the weighted average export price per product type with the weighted average normal value, in accordance with Article 2(11) and (12) of the basic Regulation.

(29) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	**Provisional dumping margin**
Anhui Jinhe Industrial Co., Ltd	97,8 %
Suzhou Hope Technology Co., Ltd	89,1 %
Anhui Vitasweet Food Ingredient Co., Ltd	37,4 %

(30) For all other exporting producers in the country concerned, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of