

**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**

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 <sup>(1)</sup>, 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* <sup>(2)</sup> ('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 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.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ C 297, 4.9.2014, p. 2.

#### 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 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

- (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 exports of the cooperating exporting producers to the Union expressed as proportion of the total export volume — as reported in Eurostat import statistics — from the country concerned to the Union.
- (31) The level of cooperation in this case is high since the exports of the cooperating exporting producers to the Union constituted the total exports to the Union during the investigation period. On this basis, the Commission decided to base the residual dumping margin at the level of the cooperating company with the highest dumping margin.

- (32) The provisional residual dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, is therefore 97,8 %.

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 %
All other companies	97,8 %

#### 4. INJURY

##### 4.1. Preliminary remark

- (33) The analysis concerns only one company. Thus, for reasons of confidentiality most indicators are given in indexed form or ranges.

##### 4.2. Definition of the Union industry and Union production

- (34) The like product was manufactured by one producer in the Union during the investigation period, which constitutes the Union industry within the meaning of Article 4(1) of the basic Regulation.

##### 4.3. Union consumption

- (35) The Commission established the Union consumption on the basis of the data provided by the Union industry, Chinese export statistics and the data of the Chinese exporting producers. Eurostat data was not suitable for this purpose because the product concerned is imported under several CN codes together with many other products. In the absence of Ace-K production in any third country, all imports into the Union were from the PRC.
- (36) Union consumption developed as follows:

Table 1

##### Union consumption (in tonnes)

	2011	2012	2013	Investigation period
Total Union consumption Index	100	104	110	104

Source: Data provided by Union industry, cooperating Chinese producers and Chinese export statistics.

- (37) The consumption of Ace-K in the Union has increased by around 4 % over the period considered, reportedly due to a rise in the demand of sugar-free products in the Union. In the last year of the period considered there was a decrease in consumption due to increased competition caused by other (new) sweeteners. However, this decrease seems to be of a temporary nature and there is no clear indication on the file that the demand for Ace-K will further decrease in the coming years.

##### 4.4. Imports from the PRC

###### 4.4.1. Volume and market share of the imports from the PRC

- (38) The Commission established the volume of Chinese imports on the basis of the Chinese export statistics cross-checked with the data provided by the three exporting producers from the PRC accounting for the total volume of exports of the product concerned during the investigation period.

- (39) Imports into the Union and market shares from the PRC developed as follows:

Table 2

**Import volume (in tonnes) and market share**

	2011	2012	2013	Investigation period
Volume of imports from the PRC	1 612	1 816	2 051	1 831
Market share of imports from the PRC — Index	100	108	115	110

Source: Data provided by cooperating Chinese producers and Chinese export statistics

- (40) The level of imports from the PRC has increased by 14 % over the period considered. During the same period the market share of Chinese imports also increased, by 10 % to reach 65 % — 80 % during the investigation period.

#### 4.4.2. Prices of the imports from the PRC and price undercutting

- (41) The Commission established the prices of imports on the basis of data from the cooperating producers from the PRC. The weighted average CIF price in euro per kilo of imports into the Union from the PRC developed as follows:

Table 3

**CIF import prices from the PRC (EUR/kg)**

	2011	2012	2013	Investigation period
Weighted average import prices	5,71	5,11	4,30	3,99
Index	100	90	75	70

Source: Data provided by cooperating Chinese producers and Chinese export statistics.

- (42) The average prices of imports from the PRC have consistently decreased during the period considered by 30 %.
- (43) The Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices of the sole Union producer charged to unrelated customers on the Union market for the product types exported to the Union by the Chinese exporting producers, adjusted to an ex-works level; and
  - the corresponding weighted average prices per product type of the imports from the cooperating exporting producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties (6,5 %) and post-importation costs.
- (44) The weighted average Union industry's price was compared with the corresponding weighted average prices per product type of the imports from the cooperating exporting producers for transactions at the same level of trade, after deduction of rebates and discounts as well as after the adjustments to the Union industry price for quality difference and the market perception thereof and R & D and marketing expenses for the same reasons as those mentioned in recital 27 above. The result of the comparison was expressed as a percentage of the Union producers' turnover during the investigation period. The Commission found a weighted average undercutting margin of between 18 % and 45 % by the imports from the PRC on the Union market.

#### 4.5. Economic situation of the Union industry

##### 4.5.1. General remarks

- (45) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered. For the injury determination, the Commission did not make a distinction between macroeconomic and microeconomic injury indicators since the sole Union producer constituted the Union industry within the meaning of Article 4(1) of the basic Regulation. The Commission evaluated the economic indicators on the basis of data related to the sole Union producer. The data were found to be representative of the economic situation of the Union industry.
- (46) The economic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping, average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital. They are analysed as follows.

##### 4.5.2. Injury indicators

##### 4.5.2.1. Production, production capacity and capacity utilisation

- (47) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

#### Production, production capacity and capacity utilisation

	2011	2012	2013	Investigation period
Production volume — Index	100	81	70	69
Production capacity — Index	100	100	100	100
Capacity utilisation — Index	100	81	70	69

Source: Data provided by Union industry.

- (48) The volume of production of the Union industry consistently decreased, by 31 %. In fact, during the period considered the Union producer increasingly performed shut-downs of the production facilities in order to cut costs. During the investigation period, the factory was, for that reason, shut down for a total of four months.
- (49) The production capacity of the Union industry remained unchanged throughout the period considered, as many costs are fixed, independently of capacity. Consequently, the capacity utilisation decreased in line with the volume of production.

##### 4.5.2.2. Sales volume and market share

- (50) The Union industry's volume of sales in the Union to unrelated customers and its market share developed negatively over the period considered:

Table 5

#### Sales volume and market share

	2011	2012	2013	Investigation period
Sales volume on the Union market — Index	100	89	82	87
Market share — Index	100	86	74	84

Source: Data provided by Union industry.

- (51) Over the period considered the volume of sales of the Union producer dropped overall by 13 %, even though consumption increased during that period. This adverse trend includes a period of slight volume recovery from 2013 to the investigation period which could only be achieved through contracts with sales prices which further undermined the viability of the Union industry.
- (52) The market share of the Union industry also fell, by 16 %, over the period considered, both due to customers which shifted supplier and to customers with dual supply which increased the share of purchases from the PRC.

#### 4.5.2.3. Growth

- (53) It is clear that Union industry's growth was negative bearing in mind the abovementioned fall in market share and the increase in consumption mentioned at recital 37.

#### 4.5.2.4. Employment

- (54) Employment and productivity developed over the period considered as follows:

Table 6

#### Employment and Productivity

	2011	2012	2013	Investigation period
Number of employees — Index	100	103	82	82
Production in tonnes per employee — Index	100	87	100	106

Source: Data provided by Union industry.

- (55) From 2011 to the end of the investigation period, the Union industry reduced its personnel by almost one fifth to cope with the decrease in production and in line with the temporary shut downs. Productivity increased slightly by 6 % over the same period as a consequence of the reduction in the number of employees.

#### 4.5.2.5. Labour costs

- (56) The average labour costs of the Union industry developed over the period considered as follows:

Table 7

#### Average labour costs per employee

	2011	2012	2013	Investigation period
Average labour costs per employee — Index	100	103	111	115

Source: Data provided by Union industry.

- (57) The Union industry average labour costs per employee increased by 15 % over the period considered because severance payments became due as a result of the reduction in personnel (see recital 54). Also, reportedly new wage rates were applicable within the chemical sector.

#### 4.5.2.6. Magnitude of the dumping margin and recovery from past dumping

- (58) All dumping margins were significant (see recital 29 above). The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the PRC.
- (59) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

## 4.5.2.7. Prices and factors affecting prices

- (60) The weighted average unit sales prices of the Union producer to unrelated customers in the Union developed as follows:

Table 8

**Sales prices in the Union**

	2011	2012	2013	Investigation period
Average sales price in the Union — Index	100	94	94	88
Unit cost of production — Index	100	106	117	119

Source: Data provided by Union industry.

- (61) The Union industry's average selling price of the like product fell by 12 % in the period considered, partly following the strongly negative trend of the average import prices from the PRC (see recital 42).
- (62) The Union industry average cost of production increased by 19 %. This was mainly caused by the increased impact of fixed costs on a reducing volume of production and sales and by an increase in the price of raw material.

## 4.5.2.8. Inventories

- (63) Stock levels of the Union industry developed over the period considered as follows:

Table 9

**Inventories**

	2011	2012	2013	Investigation period
Closing stocks — Index	100	98	89	94
Closing stocks as a percentage of production — Index	100	121	126	135

Source: Data provided by Union industry.

- (64) Although closing stocks fell in the period considered due to temporary shut downs of production facilities to cut costs (see recital 48), as a percentage of production stocks they increased.

## 4.5.2.9. Profitability, cash flow, investments, return on investments and ability to raise capital

- (65) Profitability, cash flow, investments and return on investments of the Union producer developed over the period considered as follows:

Table 10

**Profitability, cash flow, investments and return on investments**

	2011	2012	2013	Investigation period
Profitability of sales in the Union to unrelated customers — Index	100	74	48	26
Cash flow — Index	100	85	75	78

	2011	2012	2013	Investigation period
Investments — Index	100	51	48	34
Return on investments — Index	100	68	44	25

Source: Data provided by Union industry.

- (66) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. In calculating profitability, the Commission deducted from the reported costs all R & D and marketing costs which it considered to be of an exceptional nature, as also mentioned in recital 27 above. Without this deduction, the Union industry would have reached a loss-making situation in the investigation period. In line with the fall in profitability, net cash flow, investments and return on investments also decreased.
- (67) The Union industry claimed that the deducted R & D and marketing costs were normal, ongoing costs related to the product concerned. However, the investigation concluded that these costs related to a new product, albeit a product falling within the product scope of this investigation. These exceptional and high costs would not occur in a normal or representative year for the Union industry. In addition, these costs concern the R & D and marketing of a product that was not sold in significant volumes on the Union market during the period considered.
- (68) Even with the above mentioned exclusion of costs, the Union producer's profitability decreased sharply and consistently over the period considered. The Commission considered the level of profitability in the investigation period and the trend of profitability to be injurious because of the clear and substantial fall described above.
- (69) The steep fall in profitability was mainly due to the allocation of steadily increasing fixed costs per tonne as compared to the reducing volume of production and sale. In addition, there was a clear fall in average prices, which led to the inability of the Union industry to sustain profit levels and as a result the profitability dropped dramatically. As shown in Table 10 above, the other performance indicators followed a similar trend to return on turnover.
- (70) The net cash flow is the ability of the Union producers to self-finance their activities. Expressed as an index, the trend in net cash flow developed negatively over the period considered, decreasing by 22 % as a consequence of the profitability decrease.
- (71) The Union industry's investments decreased even more significantly. The volume of investments during the investigation period was only around one third of the volume of investments in 2011. As for profitability, investments in the new product were not taken into account for this calculation.
- (72) The return on investments expresses the profit in percentage of the net book value of investments. It fell strongly and consistently from 2011 to the investigation period, dropping around 75 %.
- (73) Being part of a large international group the sole Union producer did not claim that its ability to raise capital had so far been affected by the above developments. However, the Union industry made clear during the procedure that the current situation was not sustainable.

#### 4.5.3. Conclusion on injury

- (74) Significant negative trends were observed in the following economic indicators: production, capacity utilisation, market share, employment, sales volume and sales prices on the Union market. Stocks (as percentage of production) increased although they decreased in absolute terms. The impact of consistently decreasing sales prices in combination with overall decreasing sales volumes have been substantial, leading to a considerable drop in market share, profitability, return on investment and cash flow.
- (75) The fact that the Union market is dominated by large players in the food and beverage sector and that such business is conducted through annual contracts means that in this sector the Union industry is particularly sensitive to falls in sales volumes and prices even if these falls concern a small number of customers.

- (76) Productivity on the other hand improved. However, the development was a consequence of a reduction in the number of employees due to the decrease in demand and, consequently, production, which made some of the workers redundant. Therefore, under these circumstances the increase in productivity cannot be considered a positive element.
- (77) Union consumption has also increased. However the Union industry was not able to benefit from it due to the fall in both sales volume and sales prices mentioned above.
- (78) An interested party questioned the existence of injury. This party argued that the situation of the Union industry during the investigation period was normal. It claimed that the Union industry had lost patent protection and subsequently its dominant market position. Therefore, it should now accept lower profits and lower sales volumes.
- (79) This argument is unfounded. The main production patent expired in 2005 (two smaller patents expired before and after that date). Following the expiry of the production patent in 2005, and well before the period considered, new players entered the market, namely the Chinese exporting producers, and their presence has been gradually increasing since then. In 2009, well before the beginning of the period considered, the market share of the Union industry had dropped from its so far dominant position to below 50 %. By 2011, the beginning of the period considered, the market share of Chinese imports in the Union market already by far and large exceeded the Union industry's market share. Therefore, indeed the expiry of the patent protection in 2005 led to a market of more than one player.
- (80) Further, the injurious situation has been analysed over the period considered, that is to say from 2011 to 2014 or as much as six years following the expiry of the production patent. The development of the majority of the injury indicators over that period (2011 — investigation period) was profoundly negative for the Union industry. More specifically, it had lost market share, decreased its sales prices, it experienced sharp declines in profitability and the rest of the financial indicators examined above, the productivity decreased, shut-downs became necessary in order to cut costs and no benefits were experienced from an increasing consumption as explained in recital 74 above. Such an economic situation cannot be simply explained by the possibility for new players to enter the market, which is the consequence of the expiry of the patent protection. In any event, this situation cannot be considered normal in the sense of a sustainable and healthy situation. First, the production patent expired well before the period considered and therefore there was sufficient time for the Union industry to react to the lack of protection. Second, even though the expiry of the patent protection could be marked with certain declines in performance, the levels of the injury indicators in the investigation period itself are considerably low for a sustainable and healthy industry. Moreover, despite this loss of patent protection the Union industry maintained a healthy economic and financial situation until 2011.
- (81) On this basis the argument that the Union industry does not suffer injury must be rejected. The expiry of the patent protection, however, is further analysed as a factor contributing to the injury suffered by the Union industry.
- (82) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## 5. CAUSATION

- (83) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: (a) the performance of the Union industry on export markets, (b) the loss of patent protection and (c) the business strategy of the Union industry.

### 5.1. Effects of the dumped imports

- (84) The Union industry's deteriorating situation over the period considered coincided with the increase in imports at dumped prices originating in the PRC. Over the period considered import volumes increased by 14 % and their prices fell by 30 %. This resulted in a 10 % increase in market share for the Chinese exporters. At the same time, the Union industry lost market share, its sales prices were driven downwards and sales volumes also developed negatively.

- (85) In particular, the profound undercutting margins of between 18 and 45 % are further indicators that the dumped imports from the country concerned exercised significant price pressure on the prices of the Union industry.
- (86) The fall in sales volumes reduced the Union industry's ability to absorb fixed costs. The low priced imports from the country concerned led to the inability of the Union industry to sustain profit levels and as a result the profitability dropped dramatically (see Table 10).
- (87) The Union industry and other interested parties claimed that the two largest Chinese exporting producers were involved in a 'price war' over the period considered and that there was an attempt of a take-over. In fact, in early 2015, shortly after the investigation period, one of these cooperating exporting producers, Suzhou Hope Technology Co., Ltd, filed for bankruptcy protection under Chinese law. The consistent and continuous downwards development of prices of the two largest Chinese exporters led in reality to sales prices at unsustainable levels. These prices strongly undercut the Union industry's prices and managed to deteriorate the situation of the Union industry as well. That is to say in terms of production, capacity utilisation, market share, employment, sales volume and sales prices on the Union market.
- (88) On the basis of the above, the Commission concluded that the Union industry's deteriorating state coincided with the substantial increase in imports at decreasing and dumped prices and that these imports had a determining role in the material injury suffered by the Union industry. Sales prices of the exporting producers decreased 30 % during the investigation period. By continuously lowering their unit sales price during the period considered, the producers from the country concerned were able to increase their market share. In view of the clearly established coincidence in time between, on the one hand, the level of dumped imports at continuously decreasing prices and, on the other hand, the Union industry's loss of sales volume and price depression, it is concluded that the dumped imports were responsible for the injurious situation of the Union industry.

## 5.2. Effects of other factors

### 5.2.1. Export performance of the Union industry

- (89) The volume and average price of exports of the Union industry developed over the period considered as follows:

Table 11

### Export performance of the Union industry

	2011	2012	2013	Investigation period
Export volume Index	100	87	75	72
Average price Index	100	112	108	98

Source: Data provided by Union industry.

- (90) The export performance of the Union industry has been similar to its sales on the Union market in terms of volume although prices have been maintained at higher levels when expressed in euros. This difference in price development can partly be attributed to the exchange rate development between euro and US dollar in the period considered. The Commission therefore concludes that although the export performance has also been negative it does not explain the injury suffered by the Union industry on the Union market.

### 5.2.2. Loss of Patent Protection

- (91) Some interested parties claimed that the injury suffered by the Union industry could be explained by a loss of patent protection on the Ace-K business by the sole Union producer. This argument is unfounded. As explained in recital 79 above, following in particular the expiry of the production patent in 2005, new players entered the market, namely the Chinese exporting producers, and their presence has been gradually increasing since then. In 2009, well before the beginning of the period considered, the market share of Union industry had dropped from

its dominant position granted by patent protection to below 50 %. By 2011, the beginning of the period considered, the market share of Chinese imports in the Union market by far and large exceeded the Union industry's market share. Therefore, indeed the expiry of the patent protection led to a market of more than one player.

- (92) However, the investigation established the existence of material injury to the Union industry. Given the findings of injury, it is considered that the Union industry maintained a healthy economic and financial situation until 2011 and began deteriorating afterwards. That is to say as much as six years after the expiry of the production patent or after a sufficiently long period of time for the Union industry to react. Therefore, it is unsubstantiated that the Union industry's situation deteriorated because there were more players on the market. The situation of the Union industry rather deteriorated because of the pricing strategies those new players employed that led to the increased unsustainably low-priced import volume and substantial price undercutting.
- (93) Therefore, the Commission concludes at this stage that the loss of patent protection did not contribute to the material injury suffered by the Union industry.

### 5.2.3. Business Strategy

#### 5.2.3.1. Pricing strategy of the Union industry

- (94) An interested party claimed that the injury suffered by the Union industry was explained by its decision to maintain its position on the Union market as a manufacturer of high quality products. On the contrary, the investigation concluded that this strategy had ensured its survival. To try to compete on price alone would have led to the closure of the Ace-K business because the dumped import prices had fallen to unsustainable levels. The unsustainable level of the import prices is further corroborated by the fact that the second largest exporting producer, for which Ace-K represents a dominant part of its total turnover, filed for bankruptcy protection under Chinese law in early 2015.

#### 5.2.3.2. Significant R & D and marketing costs incurred by the Union industry

- (95) It was claimed by an interested party that the injury suffered by the Union industry was explained by expenditure on a new product over the period considered. It should be noted that such expenditure related to the R & D and marketing of a new product containing Ace-K. However, as explained under recital 66, the costs of this innovation were not taken into account in the injury analysis and therefore the finding of material injury could not be affected by this expenditure.
- (96) It is thus concluded that the business strategy adopted by the Union industry did not contribute to the material injury suffered by the Union industry.

### 5.3. Conclusion on causation

- (97) The injury in this investigation is clear and wide ranging across most of the indicators as described above. The injury is clear in both its volume aspects (particularly market share, production, capacity utilisation, sales volume on the Union market and employment) and price aspects (average sales prices), as well as in performance indicators (profitability, return on investment, investment and cash flow). There was a clear coincidence in time between the increase in volume and market share of the low-priced dumped imports with the negative development in the economic situation of the Union industry. While the volume aspects are more pronounced, there is a clear correlation between steep deterioration of sales and production volumes and subsequent deterioration of financial indicators.
- (98) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The Commission has not identified any other factors which could have contributed to the injury.
- (99) The Commission therefore concluded that the dumped imports have caused the material injury suffered by the Union industry and that there were no other factors that could break the causal link.

## 6. UNION INTEREST

- (100) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

### 6.1. Interest of the Union industry

- (101) The investigation established that the Union industry suffered material injury caused by the dumped imports from the PRC. Almost all injury indicators showed negative trends over the period considered, in particular production volume, sales volume, sales prices, employment, market share and profitability. A downward trend was also established for other indicators related to the financial performance, such as cash flow and return on investments.
- (102) It is expected that following imposition of measures, import prices will increase and the Union industry will be partially relieved from the severe price pressure currently exerted by the dumped imports. In the absence of measures, the situation of the Union industry is very likely to further deteriorate. Further losses of sales volume and market share are very likely to endure, as the price pressure from the dumped imports will continue and the Union industry will be forced to lower its price levels even more. On the other hand, there are no grounds to establish that the price pressure would divert in absence of measures and would not follow the trends observed over the period considered. It is not excluded that, in the absence of measures, the Union industry will be forced to cease production of Ace-K altogether in the medium term, with the consequent loss of employment in the Union. This would also render the Union market completely dependent on imports from the PRC.
- (103) The Commission therefore concluded at this stage that the imposition of anti-dumping duties would be in the interest of the Union industry.

### 6.2. Interest of unrelated importers

- (104) Out of 25 contacted, only three importers submitted questionnaire replies. They represent around 13 % of total Ace-K imports from the PRC. These companies were subject to on-the-spot verifications.
- (105) Imports of Ace-K from the PRC represent less than 10 % of the total turnover of these importers in the investigation period (for two of them, even less than 1 %).
- (106) All three cooperating importers claimed that duties would have a negative impact on their activities as they would inevitably lead to higher prices. One importer emphasised the importance of dual sourcing for its customers.
- (107) Another importer claimed that the Ace-K was not easily substituted for products containing it, which were already on the market. New products would be developed with alternative sweeteners rather than the product concerned.
- (108) The Commission established that the importers could indeed be negatively affected by the measures but to a very limited extent. Ace-K is only a small part of the business for importers, which have quite a wide product portfolio. In addition, since measures would only restore fair competition on the Union market, it is considered that anti-dumping measures would not prevent importers from selling the product concerned in the Union.
- (109) In the same line, since importers and end users alike have emphasised the need for two sources of supply, measures would most likely enhance the possibility of dual supply rather than preventing it. This is due to the fact that without measures the Union industry would be very likely driven out of the market.
- (110) Therefore, from the information available, it is clear that the imposition of measures on importers would have a very limited impact, if at all, and such impact would be clearly outweighed by the benefits that the measures could bring to the Union industry.

### 6.3. Interest of users

- (111) The Commission contacted around 80 users of Ace-K upon initiation. Only one user submitted a questionnaire reply. The main users form part of the sugar-free or sugar reduced segment of the food and beverage sector. Other sales of Ace-K are consumed in the pharmaceutical sector to make medicines more palatable.
- (112) For the cooperating user, although Ace-K is used in most of its products, the Ace-K purchases are very small compared to overall production and sales costs.
- (113) The cooperating user claimed that the product concerned is a key component for a considerable part of its finished products and extremely difficult to be substituted without negatively impacting its quality standards and competitiveness.
- (114) Three other users, representing both large multinational food and beverage producers and smaller specialised pharmaceutical companies, did not complete the questionnaire but provided their comments in written submissions. They claimed that, subject to the determination of dumping, the Union industry should be maintained as a viable competitor and a reliable source of high quality supply.
- (115) The investigation found that, in terms of costs, the importance of Ace-K in finished products is minimal. However, as claimed by the cooperating user, the use of Ace-K is essential for products which are already in the market. New products might be developed with alternative sweeteners but to change the formulation of established products would be risky and costly. Therefore, the access of users to alternative sources of Ace-K is very important.
- (116) This argument was also put forward by the three users which submitted comments. They underlined that they did not wish to depend exclusively on Chinese Ace-K with a risk of monopolistic prices due to the possibility of concentration of the sector in the PRC.
- (117) As mentioned in recital 108 above, the anti-dumping measures proposed aim at restoring a level playing field which should allow both Union and Chinese producers to remain in the market as viable competitors. The users' need for dual supply would then be better addressed with the imposition of measures than without them.

### 6.4. Conclusion on Union interest

- (118) The imposition of anti-dumping measures can be expected to enable the Union industry to stay in the market and following that to improve its situation. There is a high risk that should measures not be imposed, the Union industry would have to consider withdrawing from the Ace-K business in the medium term, resulting in inevitable job losses. This would create a monopoly for the Chinese exporting producers, whose number is also likely to decrease. While having a possible minor impact on importers, this would be detrimental to the end users of Ace-K, some of which have underlined the importance of maintaining a source of supply in the Union.
- (119) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of Ace-K originating in the PRC at this stage of the investigation.

## 7. PROVISIONAL ANTI-DUMPING MEASURES

- (120) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

### 7.1. Injury elimination level (injury margin)

- (121) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry. The measures should be established at a level sufficient to restore a situation of fair competition between the Union industry and the exporting producers in the PRC.
- (122) Injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports.

- (123) To that end, the Union industry's price established for the price undercutting calculation in recitals 43 and 44 was considered to be a non-injurious price and used in the calculations of the injury margins. The particular circumstances of the present case revealed that as the due exclusion of non-recurring and exceptional R & D and marketing expenses led to an actual profit in the sales of the like product during the investigation period, the injury elimination level should be attained by such an actual price.
- (124) Therefore, the Commission determined the injury elimination level on the basis of a comparison of the weighted average import CIF price of the cooperating exporting producers in the country concerned, as established for the price undercutting calculations, with the adjusted weighted average ex works price of the like product sold by the Union industry on the Union market during the investigation period, also as established for the price undercutting calculations. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

## 7.2. Provisional measures

- (125) Provisional anti-dumping measures should be imposed on imports of acesulfame potassium originating in the PRC as well as acesulfame potassium originating in the PRC contained in certain preparations and/or mixtures in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.
- (126) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury margin	Provisional anti-dumping duty
Anhui Jinhe Industrial Co., Ltd	97,8 %	87,7 %	87,7 %
Suzhou Hope Technology Co., Ltd	89,1 %	76,6 %	76,6 %
Anhui Vitasweet Food Ingredient Co., Ltd	37,4 %	23,1 %	23,1 %
All other companies	97,8 %	87,7 %	87,7 %

- (127) However, as the anti-dumping duty should also apply to any preparations and/or mixtures that include Ace-K it is more appropriate for the implementation of the duty by the customs authorities of the Union, to express the duty as a fixed amount in euro per kg net and apply this to the pure Ace-K imported, or the proportion of Ace-K in the prepared and/or mixed product.
- (128) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (129) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission<sup>(1)</sup>. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170/Wetstraat 170, 1040 Brussels, Belgium.

- (130) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Annex I. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (131) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

#### 8. FINAL PROVISIONS

- (132) In the interests of sound administration, interested parties may submit written comments and/or request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (133) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is imposed on imports of 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.

2. The rates of the provisional anti-dumping duty applicable to the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Provisional duty rate — euro per kg net	TARIC additional code
Anhui Jinhe Industrial Co., Ltd	3,19	C046
Suzhou Hope Technology Co., Ltd	3,15	C047
Anhui Vitasweet Food Ingredient Co., Ltd	1,23	C048
All other companies	3,19	C999
All companies declaring preparations and/or mixtures not containing acesulfame potassium originating in the People's Republic of China	0	C045

3. The anti-dumping duty on acesulfame potassium contained in preparations and/or mixtures shall be applicable in proportion in the preparations and/or mixture, by weight, of the total content of acesulfame potassium.

4. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, which shall conform to the requirements set out in Annex I. If no such invoice is presented, the duty applicable to all other companies shall apply.

5. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

6. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

*Article 2*

Upon presentation of the customs declaration for release into free circulation to the Member State's customs authority, in cases where the acesulfame potassium originates in a country other than the country of origin of the preparations and/or mixtures in which it is contained, the importer shall submit a declaration of origin issued by the final producer of the preparations and/or mixtures in conformity with the requirements in Annex II.

*Article 3*

1. Within 25 calendar days of the date of entry into force of this Regulation, interested parties may:
  - (a) Request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
  - (b) Submit their written comments to the Commission; and
  - (c) Request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
2. Within 25 calendar days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EC) No 1225/2009 may comment on the application of the provisional measures.

*Article 4*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 1 shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 May 2015.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX I

The valid commercial invoice referred to in Article 1(4) must be issued showing the following:

- (1) The name and function of the official of the entity issuing the commercial invoice.
- (2) The following declaration: 'I, the undersigned, certify that the acesulfame potassium (Ace-K) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'
- (3) Date and signature of the official of the entity issuing the commercial invoice.

## ANNEX II

**Declaration of Origin**

Seller: [insert full name and address of the seller of the preparations and/or mixtures containing acesulfame potassium]

Number and date of commercial invoice:

Packing No	Product description of the preparation and/or mixture containing acesulfame potassium	Quantity in kg of the acesulfame potassium contained in the product	Country of origin of the acesulfame potassium
(1)	(2)	(3)	(4)

Producer: [insert full name and address of the final producer of the preparations and/or mixtures containing acesulfame potassium if the producer is not identical to the seller]

The producer of these goods hereby declares:

- that the origin declared in column 4 for the goods described in column 2 of this declaration has been determined by it in accordance with the provisions of Articles 23 and 24 of Council Regulation (EEC) No 2913/92 <sup>(1)</sup>,
- its willingness to cooperate fully with the Commission of the European Union, or the customs authorities of the importing Member State when verifying the accuracy of this declaration.

Date	(Stamp of the signing producer company)	(Signature)
		(Name and function of the authorised signatory)

<sup>(1)</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).