

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**

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

- (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.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ 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 (OJ L 125, 21.5.2015, p. 15).

- (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 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.
- (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 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.
- (30) One Chinese exporting producer claimed that the quality of its Ace-K is not only lower compared to that of the Union producer but also compared to those of its two Chinese competitors. It claimed that the quality adaptation made for its product should therefore be higher. Evidence supporting this concerned test reports comparing its product with that of one other Chinese cooperating exporting producer and a statement issued by an importer in the Union. This importer stated to have purchased the product concerned from this particular Chinese producer at a lower price as its product is allegedly of lower quality compared to that of its Chinese competitor.
- (31) This claim was not accepted, as the test reports submitted were dated prior to the investigation period. The quality of the product concerned from the Chinese exporting producer may well have improved since. Furthermore, though the claim of inferior quality was made vis-à-vis both of the other two cooperating Chinese producers, the test reports compared the products of the Chinese producer making the above claim with only one other Chinese cooperating producer. As for the statement issued by the importer, this also only concerned the product of the Chinese producer making the above claim and one other Chinese cooperating producer. In addition, no verifiable evidence supporting the statement (such as invoices indicating lower quality and/or purchase prices) was provided.
- (32) Based on the above, the Commission considers the quality adaptation made to be justified and at the appropriate level. The adaptation to the Union prices to reflect the quality differences is therefore confirmed.

3.1.3. *R & D and marketing adaptation related to activities for a very specific and different product developed by the complainant*

- (33) Following provisional disclosure, the complainant commented that the Commission did not provide any explanation as to why costs relating to its newly developed product had been deducted from the normal value and argued that no adaptation was warranted.
- (34) In this respect, it needs first to be noted that the costs made in relation to the newly developed product have been deducted consistently throughout the dumping and the injury analysis, as these costs are related to a very specific and different product developed by the complainant (see recitals 12 to 14). They are of an exceptional nature and unique to the Union industry. Second, as the new product was still in the process of being fully launched, only very limited quantities of sales had taken place in the investigation period, of which the sales prices were in any event not representative. No such costs had been incurred by any of the Chinese exporting producers, which are considered to be generic producers of the product concerned. Therefore, in order to determine the normal value under Article 2(7) of the basic Regulation on a reasonable basis, the Commission considered it reasonable to make an adaptation by excluding the costs related to the new product from the normal value computation.
- (35) The complainant also contested the adaptation as such on the basis that costs were deducted from prices, stating that there would be no legal basis for doing so under Article 2(10) of the basic Regulation and that by doing so the Commission would 'mix apples with oranges'. However, as explained in recital 21 above, the normal value has been established on the basis of Article 2(7) of the basic Regulation and this adaptation was found to be warranted under the terms of this Article to determine a normal value on a reasonable basis. In addition, it was clear that the price setting of the Union industry was affected by these (R & D and mainly marketing) costs related to a new a very specific and different product. Indeed, the investigation showed that those costs were allocated to the Ace-K activity and it is therefore logical that the company concerned, in its price setting, takes account of them in order to recover these costs. In fact it was confirmed by the Union Industry in its questionnaire response that cost of production is a factor considered in price formation process.
- (36) The complainant also challenged the magnitude of the adaptation, which it considered too high. It submitted that a lower amount per kg was justified by alleged differences in development and marketing costs for the Union market as compared to other markets. In this respect, it should first be underlined that this distinction in costs per market was not made by the complainant during the investigation despite the fact that it had been requested to give a breakdown of these development and marketing costs. Secondly, these figures could not be verified during the on spot verification. This contrasts with the adaptation as calculated by the Commission, as it was based on verified data from the complainant. The Commission therefore considers that the complainant has not brought evidence demonstrating that the level of the adaptation would be unreasonable. In any event, it was not considered prudent to reassess one element of SG&A costs in this manner and not others. In view of the above, this claim cannot be accepted.
- (37) One Chinese exporting producer asked the Commission to disclose the exact amount of the adaptation made for activities related to a very specific and different product developed by the complainant. However, this could not be disclosed, as this is confidential by nature.
- (38) The amount of the three adaptations made by the Commission to determine the normal value on a reasonable basis represents between 25 % and 45 % of the Union sale price of the Union industry.

3.1.4. *Claims for other adaptations*

- (39) As explained above, in its determination of the normal value on a reasonable basis, the Commission used as its starting point the actual average Union sales price, duly verified.
- (40) Following disclosure of provisional findings, the Union industry contested the use of actual sales prices as a starting point. In particular, it argued that 'a reasonable profit margin' should have been added to those actual prices. In the complainant's view, the profit margin realised in 2009 (ranging between 15 % and 25 %) would have been 'a reasonable profit margin', as the complainant had no dominant position with its market share having dropped to below 50 % in that year. Allegedly, dumping and injury had not yet occurred in 2009.

- (41) In recital 66 of the provisional Regulation it was already explained that the sales of the Union producer to independent customers were profitable. The exact profitability of these sales thus calculated is confidential towards parties other than the Union producer and profitability had therefore been presented in indexes in Table 10 of the provisional Regulation, but it was above 5 %, which in the synthetic sweeteners industry is reasonable. The exact figure has been disclosed to the complainant. Furthermore, normal value was established on the basis of Article 2(7) of the basic Regulation. Union industry prices were used as a starting point and were adapted for elements related to Union industry specific factors of price formation and activities related to a very specific and different product developed by the complainant. This method was considered reasonable in view of the specific facts of this case and information available on file. Therefore, there was no need to replace the actual profit by a target profit to determine the normal value on a reasonable basis and recalculate normal value as was claimed by the complainant. The claim is thus rejected.
- (42) Finally, the complainant identified a computational error concerning the Union sales listing which was the basis for the normal value. This error was corrected and the correction is reflected in the table under recital 53 below.

3.1.5. *Comments after final disclosure*

- (43) In its reply to the definitive disclosure the complainant contested that the Commission had calculated the amount of the deduction for differences in level of trade on the basis of the full Union industry ex-works price, as that price included the exceptional R & D and marketing costs for a very specific and different product developed by the complainant. It considered that it should have been applied to the adapted ex-works price of the Union industry after the deduction of those exceptional costs.
- (44) However, the level of trade adaptation rate, as explained in recital 24 above, is the weighted average gross margin realised by the cooperating importers on the distribution of Ace-K. It therefore should be applied to the actual sales price as it is an adaptation to address objective differences in sales prices as they are identified in the market. The level of trade adaptation is closely related to prices as observed on the market. This claim was therefore rejected.
- (45) After disclosure, the complainant also reiterated 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. It questioned the revised methodology employed by the Commission as the distributors' margin on which it was based would include services that distributors for the Union industry would not have to provide, resulting in a too high margin.
- (46) However, although certain additional services were identified during the investigation, the gross margin established for the distributors was net of such additional activities and thus purely relating to the trading activity. Therefore, the rate established for taking account of differences in level of trade relates to the difference in level of trade only and it is confirmed that the rate thus obtained is more appropriate than the rate according to the methodology proposed by the complainant, as already explained in recital 24 above. The complainant's claim relating to this issue was therefore dismissed.
- (47) In its comments to the final disclosure, the complainant also requested a further disclosure of several items relating to the exceptional R & D and marketing costs incurred for a very specific and different product developed by the complainant and to its own profit margins. However, since these items had been either already disclosed or directly provided by the complainant itself in its questionnaire reply, during the verification visit and in various submissions, the complainant was duly informed that it already had all the required information in its possession and that no additional disclosure was deemed necessary.
- (48) During the hearing with the Hearing Officer in trade proceedings following the final disclosure the complainant presented as a new claim that the level of trade adaptation should be expressed as a fixed-per-kilogram amount. The Commission noted that this comment is formally time barred because it was submitted after the deadline for comments on the final disclosure. In any event, the Commission considered that the use of a percentage for such an adaptation is not unreasonable.

3.1.6. Conclusion on normal value

- (49) In the absence of any further comments regarding the determination of normal value, recitals 22 and 23 of the provisional Regulation are confirmed.

3.2. Export price

- (50) In the absence of any comments regarding export price, recital (24) of the provisional Regulation is confirmed.

3.3. Comparison

- (51) The comments received on the adaptations to the normal value which in reality concerned the establishment of the normal value as such have been addressed in recitals 20 to 48. The Commission received no further comments. The conclusions reached in recitals 25 to 26 in the provisional Regulation are thus confirmed.

3.4. Dumping margins

- (52) In the absence of any comments, the methodology used for calculating the dumping margins, as set out in recitals 28 to 32 of the provisional Regulation, is confirmed.
- (53) Taking into account the correction of the computational error, as described in recital 42, and the revised methodology for establishing the level of trade adaptation rate, as described in recital 24, the definitive dumping margins, expressed as a percentage of the CIF (cost, insurance, freight) Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
Anhui Jinhe Industrial Co., Ltd	135,6 %
Suzhou Hope Technology Co., Ltd	119,9 %
Anhui Vitasweet Food Ingredient Co., Ltd	64,0 %
All other companies	135,6 %

4. INJURY

4.1. Union industry and Union production

- (54) In the absence of comments on Union industry and Union production, recital 34 of the provisional Regulation is confirmed.

4.2. Union consumption

- (55) In the absence of comments on Union consumption, recitals 35 to 37 of the provisional Regulation are confirmed.

4.3. Imports from the country concerned

- (56) As already mentioned in recital 42 above, a computational error in the Union sales listing was corrected. That correction also affected the undercutting margins which changed accordingly. The undercutting margins were equally affected by the revised level of trade adaptation rate, which is duly explained in recital 24 above. The revised weighted average undercutting margins ranged from 32 % to 54 %.

- (57) Following disclosure, the Union industry claimed that, because of the adaptation made to the Union industry price as mentioned in recital 44 of the provisional Regulation, the undercutting margins found by the Commission were understating the actual price undercutting. However, these adaptations are appropriate as they have been made in order to bring the Union industry prices at a level which allows for a fair comparison with the prices of Chinese imports.
- (58) In the absence of any further comments concerning the imports from the country concerned, and with the exception of the revised undercutting margins as mentioned in recital 56 above, the conclusions set out in recitals 38 to 44 of the provisional Regulation are confirmed.

4.4. Economic situation of the Union industry

- (59) The Union industry contested the exclusion of certain R & D and marketing costs for the determination of the economic situation of the Union industry. However, in the absence of any evidence to the contrary, the Commission maintains that these costs were incurred for a very specific and different product developed by the complainant and of an exceptional nature and that they should therefore be disregarded for the purpose of assessing the economic situation of the Union industry.
- (60) In the absence of any other comments concerning the development of the injury indicators, the conclusions set out in recitals 45 to 73 of the provisional Regulation are confirmed.

4.5. Comments after final disclosure

- (61) After final disclosure, the complainant submitted comments on certain adaptations to the Union industry's ex-works price used for the injury calculation. These comments which also applied to the calculation of normal value are addressed in recitals 43 to 48 above. The Commission applied symmetry in establishing a benchmark for the injury elimination calculation.

4.6. Conclusion on injury

- (62) On the basis of the above, the conclusions set out in recitals 74 to 82 of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation are confirmed.

5. CAUSATION

- (63) The Commission received no comments on the provisional findings concerning the causal link between dumping and injury. It is consequently confirmed that the dumped imports from the PRC caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation and that there are no other factors which are as such as to break the causal link between the dumped imports from the PRC and the injury suffered by the Union industry. Therefore, the conclusions as set out in recitals 97 to 99 of the provisional Regulation are confirmed.

6. UNION INTEREST

6.1. Interest of the Union industry

- (64) The complainant contested recital 102 of the provisional Regulation as it considers that it means that the duties grant only partial relief to the Union industry, which contravenes the basic Regulation.
- (65) It should be emphasised that the duty imposed is resulting from the application of the provisions of the basic Regulation. The expression 'partially relieved' refers only to the price pressure exerted by the dumped imports, as it is expected that following imposition of measures import prices will increase. It does not refer to a partial recovery from injury.

- (66) No further comments or information were received regarding the interest of the Union industry. Therefore the provisional findings in recitals 101 to 103 of the provisional Regulation, as interpreted above, are hereby confirmed.

6.2. Interest of unrelated importers

- (67) In the absence of any comments regarding the interest of unrelated importers and traders, recitals 104 to 110 of the provisional Regulation are confirmed.

6.3. Interest of users

- (68) In the absence of any comments regarding the interest of users, recitals 111 to 117 of the provisional Regulation are confirmed.

6.4. Conclusion on Union interest

- (69) In the absence of any other comments concerning the Union interest, the conclusions reached in recitals 118 and 119 of the provisional Regulation are confirmed.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. Injury elimination level (injury margin)

- (70) The complainant claimed that, as the injury elimination level had not been set by adding a target profit, the provisional duties would not be sufficiently high to eliminate the full injury suffered by the Union industry as required by Article 7(2) of the basic Regulation. In particular, the complainant contested the Commission's expectation that the provisional level of the measures would allow the Union industry to recover its costs and realise a reasonable profit.
- (71) In this regard, and as mentioned in recital 41, the Union industry achieved, after deduction of costs of an exceptional nature linked the development of a very specific and different product, a reasonable profit during the investigation period despite the negative trends observed during the period considered. Therefore, the Commission reiterates that there is no basis to add a target profit to the profit already realised. It is expected on this basis that the duties, based on undercutting, would eliminate the injury suffered and prevent a further deterioration of the situation of the Union industry.
- (72) In order to reinforce its argument, the complainant compared the present investigation with the anti-dumping investigation on imports of *dicyandiamide* originating in the PRC ⁽¹⁾. The Union industry claimed that the approach adopted in that investigation is not appropriate in the present case and should therefore not be applied.
- (73) In the *dicyandiamide* investigation, three significant aspects were taken into account to justify the approach adopted: (i) the measures should not compensate for factors which could not be attributed to the dumped imports; (ii) the dumping margin was calculated using an adapted normal value based on Union industry data; and (iii) there were only two sources of *dicyandiamide* in the world. As regards the third factor, the Commission found that there was a risk that, if duties were too high, the Union industry could monopolise the Union market.
- (74) Therefore, it is clear that the situation which existed in the *Dicyandiamide* investigation is very similar to the current investigation. In the current investigation the dumping margin is again calculated using normal value based on Union industry data with certain adaptations required objectively. In addition, there equally are very few sources of world supply and there is also a risk of a monopoly should the measures not be calculated in a fair and balanced manner.

⁽¹⁾ Council Regulation (EC) No 1331/2007 of 13 November 2007 imposing a definitive anti-dumping duty on imports of *dicyandiamide* originating in the People's Republic of China (OJ L 296, 15.11.2007, p. 1).

- (75) Hence, the Commission considers that in the present investigation a similar approach is justified.
- (76) In the absence of any further comments on the injury elimination level, recitals 121 to 124 of the provisional Regulation are confirmed.
- (77) As described in recital 42, a computational error concerning the Union sales listing, which also affected the injury calculations, had to be corrected. Furthermore, as explained in recital 24, a revised basis for calculating the level of trade adaptation was considered to be warranted. The corrections resulted in revised definitive injury margins which are as follows:

Company	Injury margin
Anhui Jinhe Industrial Co., Ltd	126,0 %
Suzhou Hope Technology Co., Ltd	108,6 %
Anhui Vitasweet Food Ingredient Co., Ltd	49,7 %
All other companies	126,0 %

7.2. Definitive measures

- (78) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the injury margins, in accordance with the lesser duty rule. In this case the duty rates have been revised following provisional disclosure, as a computational error affecting both the dumping and the injury margins was corrected and the adaptation for the level of trade was revised.
- (79) On the basis of the above, the rate at which such duties will be imposed are set as follows:

Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
Anhui Jinhe Industrial Co., Ltd	135,6	126,0	126,0
Suzhou Hope Technology Co., Ltd	119,9	108,6	108,6
Anhui Vitasweet Food Ingredient Co., Ltd	64,0	49,7	49,7
All other companies	135,6	126,0	126,0

- (80) The duty remains a fixed amount in Euro per kg net as explained in recital 127 of the provisional Regulation to ensure a consistent implementation of the measures by customs authorities, even though there is no more reference to the Ace-K contained in preparations and/or mixtures.
- (81) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imported product concerned produced by any other company not specifically mentioned with its name 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.

- (82) 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 ⁽¹⁾. 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*.
- (83) 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 subject to the requirements set out in Article 1(3). Imports not accompanied by that invoice will be subject to the anti-dumping duty applicable to 'all other companies'.
- (84) In case the evolution of imports of preparations and/or mixtures containing Ace-K into the Union so requires, the need for swift appropriate action will be assessed, including the initiation of an investigation under Article 13 of the basic Regulation.
- (85) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies will 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.

7.3. Undertakings

- (86) Two Chinese exporting producers offered price undertakings in accordance with Article 8(1) of the basic Regulation. One of them submitted a revised undertaking offer following a hearing with the Commission.
- (87) The Commission assessed the offers and identified a number of product specific risks. One of the risks relates to possible misclassification of the product concerned. During the investigation, it was observed that food grades (subject to a 6,5 % customs duty) were misclassified as pharmaceutical grades (subject to a 0 % customs duty). One of the Chinese exporting producers claimed to have not engaged in such practices. Even though this may be so, the risk, as identified, remains. The same Chinese exporting producer offered to present all customs clearance documents to the Commission, should the undertaking be accepted. To monitor the payment of customs duties for each of the transactions would however be disproportionately burdensome.
- (88) Another product specific risk stems from the possibility to modify the product concerned and change it into preparations and/or mixtures combined with other elements, such as water and/or other sweeteners. This type of product is not subject to measures. One of the Chinese exporting producers committed to not export Ace-K in any other form but in its pure form. Such a scenario would also require monitoring in a way that would be very burdensome, if not impracticable.
- (89) The Commission identified additional risks. In addition to the product concerned, both exporting producers produce and sell other products (i.e. a variety of food additives) to the Union, mainly to traders. During the investigation period, one of the exporting producers sold the product concerned and other products to the same traders. Such a practice increases the risk of cross-compensation and would require monitoring of the entire export sales of the exporting producers. One Chinese exporting producer stated to be willing to cease its sales to users in the Union and to cease its sales of other products (i.e. products other than the product concerned) to traders in the Union who are also purchasing Ace-K from this Chinese exporting producer. Furthermore, the same Chinese exporting producer stated to be willing to limit its exports of Ace-K to a exhaustive list of traders based in the Union and to cease sales of Ace-K to the Union via traders located in third countries. This however would equally require substantial monitoring to the extent considered impracticable by the Commission.
- (90) Finally, as none of the companies requested MET, the Commission could not fully assess the reliability of the accounts which, inter alia, is crucial for establishing a relationship of trust on which undertakings are based.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium

- (91) On the basis of the above, the Commission concluded that both undertaking offers could not be accepted.

7.4. Definitive collection of the provisional duties

- (92) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected, except those levied on Ace-K originating in the People's Republic of China contained in certain preparations and/or mixtures, if any.
- (93) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 currently falling within CN code ex 2934 99 90 (TARIC code 2934 99 90 21).

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

Company	Definitive duty — euro per kg net	TARIC additional code
Anhui Jinhe Industrial Co., Ltd	4,58	C046
Suzhou Hope Technology Co., Ltd	4,47	C047
Anhui Vitasweet Food Ingredient Co., Ltd	2,64	C048
All other companies	4,58	C999

3. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice on which it must appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of acesulfame potassium 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.' If no such invoice is presented, the duty applicable to 'All other companies' shall apply.

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

Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Implementing Regulation (EU) 2015/787 shall be definitively collected, except those levied on Ace-K originating in the People's Republic of China contained in certain preparations and/or mixtures.

Article 3

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

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

Done at Brussels, 30 October 2015.

For the Commission

The President

Jean-Claude JUNKER
