

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/1247****of 28 July 2016****Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame 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 Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 (the basic Regulation) on protection against dumped imports from countries not members of the European Union<sup>(1)</sup>, and in particular Article 9(4) thereof,

Whereas:

**1. PROCEDURE****1.1. Provisional measures**

- (1) On 26 February 2016, by Commission Implementing Regulation (EU) 2016/262 (the provisional Regulation)<sup>(2)</sup> the European Commission (the Commission) imposed a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China (the country concerned or the PRC) under Article 7(4) of the basic Regulation.
- (2) The investigation was initiated on 30 May 2015 following a complaint lodged on 16 April 2015 by Ajinomoto Sweeteners Europe SAS (ASE), the sole producer of aspartame in the Union. On 15 October 2015 ASE was purchased by Hyet Holding BV and consequently was renamed to Hyet Sweet SAS (Hyet). Hyet represents 100 % of Union production of aspartame and constitutes the Union industry within the meaning of Article 4(1) of the basic Regulation.
- (3) As set out in recital (18) of the provisional Regulation the investigation of dumping and injury covered the period from 1 April 2014 to 31 March 2015 (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) A hearing took place upon request from the Chinese Chamber of International Commerce, with the presence of representatives of one exporting producer, Sinosweet Co., Ltd. The main points discussed were the possibility of obtaining a price undertaking, as well as other requests and comments on the dumping calculations. The comments were later formalized in a submission, and they are addressed in the present Regulation.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Commission implementing Regulation (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China (OJ L 50, 26.2.2016, p. 4).

- (6) The intervention of the Hearing Officer in trade proceedings was requested by one of the exporting producer, Changmao Biochemical Engineering Co., Ltd. The main points discussed were the reasons for refusal market economy treatment, the choice of the analogue country, the need for adjustments when establishing price undercutting and the alleged absence of causal link between the material injury and the dumped imports.
- (7) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the provisional findings accordingly.
- (8) 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 aspartame 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.
- (9) The comments submitted by the interested parties were considered and taken into account where appropriate.

### 1.3. Sampling

- (10) In the absence of comments concerning sampling of importers, recitals (8) to (10) of the provisional Regulation are confirmed.
- (11) In the absence of comments concerning sampling of exporting producers in the PRC, recitals (11) and (12) of the provisional Regulation are confirmed.
- (12) In the absence of comments concerning individual examination, recital (13) of the provisional Regulation is confirmed.

### 1.4. Market economy treatment ('MET') claim forms

- (13) In the absence of comments concerning the claims for market economy treatment ('MET'), recital (14) of the provisional Regulation is confirmed.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (14) The product concerned, as defined and further clarified in recitals (19) to (22) of the provisional Regulation is aspartame (N-L- $\alpha$ -Aspartyl-L-phenylalanine-1-methyl ester, 3-amino-N-( $\alpha$ -carbomethoxy-phenethyl)-succinamic acid-N-methyl ester), CAS RN 22839-47-0, originating in the PRC, currently falling within CN code ex 2924 29 98 ('the product concerned' or 'the like product').
- (15) Following the provisional disclosure the Union industry reiterated its concern for possible circumvention of measures via mixtures and preparations containing aspartame. The Union industry also claimed that there would be no difficulties with implementation if duties on such mixtures and preparations were imposed. As a way of example it referred to another investigation concerning monosodium glutamate in the United States.
- (16) In reply to this comment it is noted that a recent investigation concerning a similar product at definitive stage concluded that a number of Member States and Switzerland encountered considerable implementation difficulties due to the inclusion of such mixtures and preparations in the product concerned. As consequence, it was decided to remove them at the definitive stage from the product definition. Given the similarities in the products (sweeteners with same applications in the food, beverage and pharmaceuticals sectors) it is highly likely that similar problems would occur in the present case.

- (17) More importantly, the findings of the investigation did not support the claim that the risk of circumvention via mixtures and preparations were high. Cooperating users confirmed that each downstream product and within each downstream product the type/brand requires different proportions of different sweeteners therefore separate importation for each mixture would be completely impracticable. Also, importation of aspartame in liquid form (as mixture with water) would require completely different and significantly more expensive packaging and transportation arrangements.
- (18) Based on the above, the product definition in recital (22) of the provisional Regulation is maintained.

## 2.2. Like Product

- (19) In the absence of comments concerning the like product, recital (23) of the provisional Regulation is confirmed.

## 3. DUMPING

### 3.1. Normal Value

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

- (20) As mentioned in recital (26) of the provisional Regulation, the MET claim submitted by one sampled exporting producer was denied because the investigation showed that it did not comply with criteria 2 and 3 of Article 2(7)(c) of the basic Regulation. The party reiterated claims that it fulfils these criteria. With regard to criterion 2, however, it did not provide any new evidence or arguments such as to re-examine the provisional assessment.
- (21) With regard to criterion 3, the party referred to a recent General Court's judgment <sup>(1)</sup> where the Court disagreed with the Commission's tax incentives analysis in relation to that criterion. It is noted that the judgment has not entered into force yet. As recalled in recital (31) of the provisional Regulation, each case is assessed on its own merits, namely on the basis of all the facts available to the Commission. In the absence of further arguments and new facts in relation to the substance of the concrete analysis of the tax incentives in the present case, the conclusions could not be revisited.
- (22) During the meeting with the Hearing Officer the party reiterated the claim addressed in recital (29) of the provisional Regulation that the benefit obtained from preferential tax regimes grants should be considered as subsidies and thus the existence of subsidy should not be classified as a distortion carried over the former non-market economy system.
- (23) As recalled in recital (32) of the provisional Regulation, the purpose of the MET assessment is different from that of an anti-subsidy investigation. Whilst the MET assessment aims at establishing whether or not a company operates under market-economy conditions on the basis of the provisions of Article 2(7)(c) of the basic Regulation, the anti-subsidy investigation aims at establishing whether or not a company has benefited from countervailable subsidies on the basis of the provisions of Regulation on protection against subsidised imports from non-EU countries <sup>(2)</sup>. These two issues thus have their own legal basis and have to be dealt with separately. For the MET, one of the relevant aspects to assess criterion 3 is whether or not the production costs and the financial situation of the investigated firms are subject to significant distortions carried over from the former non-market economy system and not whether a company benefited from countervailable subsidies.
- (24) In any event, recital (29) of the provisional Regulation explains that the said exporting producer failed to fulfil criterion 3, not only because of the tax incentives it received, but also because of the benefit it obtained on the

<sup>(1)</sup> Judgment of the General Court of 16 March 2016 — Xinyi PV Products (Anhui) Holdings v Commission, Case T-586/14 (OJ C 156, 2.5.2016, p. 36.). The judgment has been appealed, case C-301/16 P.

<sup>(2)</sup> Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

purchase of its land-use rights. With regard to the land use rights, the party claimed that the set of documentation submitted in the current case was identical to that submitted in two previous investigations where it eventually obtained MET. However, the conclusion that criterion 3 was not fulfilled was not only based on documents submitted in previous investigations but also on new evidence collected during the current investigation, namely a property valuation report established by an independent auditor. This document is annexed to a prospectus published on the Hong-Kong stock exchange for the attention of potential investors. The report shows that there is marked difference between the price paid by the exporting producer for its land use right and the market value. On that basis, it was considered that the party did not obtain the land-use right at market value and criterion 3 was not considered to be fulfilled.

- (25) On the basis of above, the claim of the exporting producer was rejected and recitals (24) to (37) of the provisional Regulation are confirmed.

### 3.1.2. Choice of the analogue country

- (26) Following the provisional disclosure, three interested parties raised concerns as to the choice of Japan as an analogue country, and in particular the producer Ajinomoto Co., Japan ('Ajinomoto Japan'), the parent company of the complainant and the establishment of the normal value for the PRC on the basis of this country.
- (27) Parties claimed in particular that Ajinomoto Japan enjoys a monopolistic position on its domestic market where it is able to command a significantly higher price compared with other markets, such as Korea or the PRC where competition is taking place. During the hearing held by the Hearing officer one party claimed that Ajinomoto Japan holds a dominant position in its domestic market, with basically 100 % market share and there is thus no imports and no competition in Japan. Moreover, parties consider that Japan is clearly not a suitable analogue country as the differences between the Japanese and the Chinese markets are obvious and are shown by the high level of the dumping margins found in the provisional Regulation. They also claimed that the presence of several domestic producers makes the domestic Chinese market more competitive, and that the profit recorded by Chinese producers on their domestic market is substantially lower than the one reported by the analogue country producer.
- (28) Another party claimed that the choice of Japan as an analogue country is the worst possible scenario and that the result of the comparison between Japanese prices and Chinese prices show that it is not a realistic or reasonable choice.
- (29) At the initial stage of the investigation, the Commission sought the cooperation from other third countries in order to select an appropriate analogue country. The investigation revealed that the world production of aspartame was concentrated in few countries: the PRC, France, Japan and Korea. The known producers in Korea and Japan were contacted. The only known Korean producer refused to cooperate. As discussed at the provisional stage, only the producer in Japan agreed to cooperate and Japan was thus the only market economy third country available as analogue country. Its data was used to establish the normal values in the provisional Regulation.
- (30) The Commission notes that the choice of Japan is contested by several parties, in particular for the high domestic market share of Ajinomoto Japan and the alleged limited competition in that market. However, the parties did not provide any evidence in support of their claims in this regard. The investigation did not show that Japan was not an open market because of import restrictions, such as high customs duties or other tariffs and quantitative restrictions and in fact revealed that imports of aspartame are reported into the Japanese market, including from the PRC and Korea.
- (31) Nevertheless, in order to assess the appropriateness of Japan as an analogue country for the PRC, the Commission further examined the competition conditions in which the prices for the like product are formed in Japan. As already noted, only one producer is active on the Japanese market competing with imports from the PRC and Korea. More importantly, the profit margins of the Japanese producer achieved on customers were found to vary greatly between types and sizes of customers. The investigation did not bring to light any rational reason for the wide difference between profit margins. In particular, it was not found that the profit margin variations could be explained by the quantity sold, for instance. Therefore, in view of this outstanding issue, it was considered that using prices that yield such an irrational variation of profits would render the determination of the normal value indeed inappropriate and unreasonable.

- (32) On that basis, at the definitive stage the Commission had to resort to any other reasonable basis for the determination of the normal value in accordance to Article 2(7)(a) of the basic Regulation. To that end, the normal value for the PRC was based on the prices of the Union industry, duly adjusted to include a reasonable profit margin.

### 3.1.3. Normal value

- (33) The prices of the sole Union producer for the like product on the Union market were used as a reasonable basis for the determination of the normal value for the exporting producers in the PRC not granted MET, pursuant to Article 2(7)(a) of the basic Regulation.
- (34) Firstly, the Commission examined whether, in accordance with Article 2(2) of the basic Regulation, the total volume of the sales of the like product to independent customers in the Union was overall representative. To this end, this total sales volume was compared to the total volume of the product concerned exported by each of the sampled Chinese exporting producers to the Union. On that basis, it was found that the Union producer sold the like product in representative quantities on the Union market.
- (35) Secondly, the Commission identified the product types sold domestically by the Union producer that were identical with the types sold for export to the Union by the sampled Chinese exporting producers. It compared on a product type basis the sales volume in the Union with the exports to the Union by each sampled exporting producer. This comparison showed that only one product type produced in the Union matched completely with the product type exported by the sampled Chinese exporting producers.
- (36) The Commission subsequently examined for the Union producer whether this product type sold on the Union market could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if the volume sold at a net sales price equal to or above the calculated cost of production, represents more than 80 % of the total sales volume of that type, and where the weighted average sales price of that product type is equal to or higher than the unit cost of production. As this product type was not profitable, the normal value could not be based on the weighted average of the price of the domestic sales during the investigation period but had to be constructed as explained in recital (37) below.
- (37) Finally, the Commission identified the product types exported from the PRC to the Union and not sold by the Union industry in the Union market and constructed normal value based on Article 2(3) and (6) of the basic Regulation. To construct normal value for these types and the non-profitable product type discussed in the preceding recital, the Commission took the average cost of production of the closest product types produced by the Union producer and added an amount for selling, general and administrative ('SG&A') expenses and profit corresponding to the weighted average amounts incurred by the Union producer on domestic sales of the like product, in the ordinary course of trade during the investigation period.
- (38) Furthermore, in reply to a claim by a party about the alleged lack of information regarding detailed product characteristics, it is clarified that contrary to other products subject to anti-dumping investigations, like certain iron or steel fasteners from the PRC, the product concerned and the like product in the present investigation are rather homogenous with limited types and variations. As an example, most of the products types sold by Chinese exporting producers had exactly the same basic characteristics concerning the use, the concentration, the packaging and the composition.
- (39) Nevertheless, to further explain the methodology followed for establishing the normal value, it should be noted that the Commission identified six specific characteristics which were relevant for the detailed definition of the different types of the product concerned: the physical form, the concentration, the packaging type, the packaging size, the use and the composition. Five product types were exported from the PRC to the Union and, for these types, only one characteristic was found to be different from the types sold in the Union by the Union industry.
- (40) As part of the final disclosure, the Commission disclosed to each Chinese exporting producer the characteristics and the type of product it used when constructing the normal values with regard to all product types including the types exported from the PRC to the Union which were not completely matching the types sold in the Union by the Union industry as explained in recitals (35) and (39) above.

### 3.2. Export price

- (41) In the absence of comments concerning export prices, recitals (51) to (53) of the provisional Regulation are confirmed.

### 3.3. Comparison

- (42) One party disagreed with the rejection of their claim for adjustment for currency conversion in their settlement contracts on the basis of Article 2(10)(j) of the basic Regulation. As explained in the recital (57) of the provisional Regulation, the investigation showed that there was no direct link between foreign exchange contracts and commercial export sales contract. The party did not provide any new evidence or arguments such as to re-examine the provisional assessment.
- (43) On the basis of above, the claim of the exporting producer was rejected. Moreover, given the use of Union industry prices for the determination of the normal value, there is no need to address the comments concerning the comparison of the Japanese like product with the product concerned.

### 3.4. Comments after final disclosure

- (44) Following the final disclosure, the Commission received comments from three interested parties.
- (45) The first interested party claimed that the data of the complainant should not be used for the determination of the normal value because it would be biased and not neutral. The interested party considers that the sole option is to use Chinese data.
- (46) The data of the Union producer on the basis of which the normal value was determined was verified on spot and was found to be reliable and accurate. In those circumstances, the relation of the Japanese producer with the Union producer is not an obstacle for using the data of the Union producer. The use of Union data for the determination of the normal value is provided for in Article 2(7)(a) of the basic Regulation. Therefore, the claim is rejected.
- (47) The same interested party claimed that the decision to use Union industry data violated its right to be timely informed. In that regard, the Commission consider the disclosure as sufficient as it contained data relating to the Union producer. Moreover, the interested party was given an opportunity to comment.
- (48) Finally, the same interested party claimed that there were differences in the costs of production between the Union producer and the Chinese producer to produce aspartame, in particular for production process, for additional services provided, type of energy used, due to the implementation of additional regulatory specifications requirements, such as requirements concerning heavy metals, arsenic, coliforms, E.coli, access to raw materials, patent expenses, 13 months wages and packing cost. The interested party claimed that those differences affect price comparability between the normal value and the export price. A second interested party claimed that the Union industry paid licensing fees in respect of soluble aspartame, a product not produced in the PRC, and thus requests that dumping calculations be revised accordingly.
- (49) The interested parties did not substantiate their claims about the alleged differences in the costs of production affect price comparability as required by Article 2(10) of the basic Regulation. In particular no evidence was provided that customers consistently pay different prices on the domestic market because of the difference in such factors. Both domestic and exported products are perceived as similar from the point of view of the consumer, who is not ready to pay different prices. On that basis, the claims are rejected.
- (50) A third interested party claimed that the Commission did not clarify whether, in the construction of the normal value, average amounts for SG&A expenses and profit were used for all products sold in the Union or only the

SG&A pertaining to the closest product type. The first interested party claimed that the profitability cannot exceed 3 % due to the situation of aspartame business. The Commission recalls, as explained in recital (50) of the provisional Regulation, that for the construction of the normal values, it added a reasonable amount for SG&A expenses and profit corresponding to the weighted average amounts actually made by the Union producer on domestic sales of the like product, in the ordinary course of trade during the investigation period as required by Article 2(6) of the basic Regulation.

- (51) The third interested party reiterates its claim for adjustment for currency conversion in its settlement contracts. However, in the absence of any new evidence or arguments such as to re-examine the provisional assessment, the claim is rejected.
- (52) The first interested party reiterated its claim that the refusal of MET was unjustified and contradicted the Commission's previous determinations as well as that tax incentives and grants should not be regarded as distortion carried over from a non-market economy. Those claims are addressed in recitals (21) to (23).
- (53) Moreover, that interested party claimed that the prospectus mentioned in recital (24) was taken into account in the previous MET determinations.
- (54) That interested party did not demonstrate that this document had any bearing on the valuation of the land-use rights account in the previous MET determinations. In any event, for each investigation the MET decision is made independently, on the basis of the specific circumstances relevant to the investigation.
- (55) That interested party also argued that the prospectus valuation cannot be compared with the purchase contract price as the land sold was without treatment and prepared.
- (56) Concerning the valuation of the land-use rights, the Commission disclosed to the interested party the detailed methodology used to estimate the difference between the fair market value and the actual costs. In that regard, the total construction cost was deducted from the total estimation for the parcel within buildings and structures. The difference of + 35 % was found significant and can be only explained by a transfer price well under a fair market value at the time of the transaction between the company and the local authorities. The fact that, as alleged by the interested party, in previous investigations that difference between the fair market value and the actual costs was evaluated differently does not change the findings of this investigation.

### 3.5. Dumping margins

- (57) In the absence of any further comments, the provisional dumping margins as set out in recitals (61) to (67) of the provisional Regulation are confirmed and the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are the following:

Company	Definitive Dumping margin %
Changmao Biochemical Engineering Co., Ltd	124,0
Sinosweet group	126,0
Niutang group	121,4
All other cooperating companies	124,6
All other companies	126,0

#### 4. INJURY

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

- (58) In the absence of comments on the definition of the Union industry and Union production, recitals (68) and (69) of the provisional Regulation are confirmed.

##### 4.2. Union consumption

- (59) In the absence of comments on Union consumption, recitals (70) to (73) of the provisional Regulation are confirmed.

##### 4.3. Imports from the PRC

###### 4.3.1. Volume and prices of the imports from the PRC

- (60) One party claimed that its rights of defence were violated since the import statistics were not made public. This party also requested explanation as to how the volumes and values of the product concerned were narrowed from the available statistics and requested clarification as to with which database and how these volumes/values were cross-checked as mentioned in recital (71) of the provisional Regulation. The party requested to have access to the import statistics.
- (61) The Commission confirms that the Chinese import volumes and prices were established on the basis of data provided by a Chinese based research company, CCM <sup>(1)</sup>. This data was cross-checked with the information available in the official Chinese Export Database that is maintained by the Chinese customs authorities. The data obtained from the Chinese Export Database is made available in the non-confidential file for consultation by the interested parties. In addition, it is also publicly available upon payment. Both CCM and the Chinese Export Database have a specific code (29242930) exclusively for aspartame and therefore they were sufficiently specific and no narrowing down was necessary.
- (62) The unit of measurement in recital (76) and table 3 of the provisional Regulation contains a clerical error. The prices indicated in recital (76) and in table 3 of the provisional Regulation concern EUR/kg and not EUR/ton.
- (63) In the absence of any other comments the findings of the provisional Regulation concerning the volume, market share and average prices of imports from the PRC as described in recitals (74) to (77) are confirmed and the unit of measurement in recital (76) and table 3 of the provisional Regulation is corrected to EUR/kg.

###### 4.3.2. Price undercutting

- (64) One interested party requested the Commission to revise the price undercutting analysis by accounting for the differences in packaging type. This party provided price quotations for different packaging materials to support its claim. Another party claimed that the undercutting calculation shall take into account the differences in the production process and the purchasing price of the raw material due to ocean freight and international insurance since these parameters allegedly had a significant bearing on the unit price of the final product.

<sup>(1)</sup> CCM Information Sciences and Technology Co., Ltd is a research company providing market information, data exploring, data research and consulting services. [www.cnchemicals.com](http://www.cnchemicals.com).

- (65) One interested party also claimed that since the Union industry lost no market share, price undercutting is of no consequence as it would only be relevant where imports from the PRC capture the Union industry's market share.
- (66) First, as explained in recital (79) of the provisional Regulation, the investigation revealed that the packaging is not a price driver. In addition, upon analysis of the quotations provided by the party the Commission found that these reveal a maximum of 0,33 RMB/kg difference in packaging costs (equal to 0,046 EUR/kg) which is negligible for a product with an average price over or around 10 EUR/kg.
- (67) Second, the injury calculations are based on comparable Union prices and the prices of the imports during the investigation period as explained in recital (78) of the provisional Regulation. Any differences between the PRC and the Union as regards the price of the raw material need to be demonstrated to affect the price comparability. It is not unusual for producers in one country to purchase raw materials at different prices than producers in another country. However, such a difference in costs does not necessary translate into difference in prices or necessarily affects the fair comparison of prices as it is only one of the price elements and not all. In any event the interested party failed to substantiate its argument how the alleged difference in the raw material costs would affect the price comparability. As a consequence this claim is rejected.
- (68) Thirdly, the investigation established that the production process used by the Union producer and the Chinese exporting producers are similar. Furthermore, the interested party failed to substantiate what kind of adjustment should be made due to the difference in production process, if any. Therefore this claim is rejected.
- (69) Following the final disclosure the interested party reiterated its claim that differences affecting price comparability as listed in recital (48) should be considered also in the undercutting calculations. In addition, that interested party claimed that for one of its customers, a trader, a certain profit margin should be included for the calculation of undercutting.
- (70) The investigation did not find that there is a price premium on the like product which is a commodity product. The investigation found that there is no quality or any other difference between the product concerned and the like product that would be systematically reflected in the prices. As to the claim on adding a profit margin to the post-importation costs of a trader, the Commission recalls that the calculations are based on prices paid by the first independent customers regardless of whether they are traders or not. Those claims are therefore rejected.
- (71) The claim that price undercutting is relevant only in cases where the dumped imports capture the industry's market share has no merit and does not reflect the wording of Article 3(3) of the basic Regulation. This claim is rejected.
- (72) Following the final disclosure, an interested party contested the Commission's conclusion and claimed that price undercutting did not materially impact the economic parameters of the Union industry.
- (73) The Commission considers that Articles 3(3) and 3(6) of the basic Regulation allow injury determination to be based on volume and/or price indicators. The claim concerning materiality of the price undercutting is addressed in section 4.5.
- (74) In the absence of any further other comments on the price undercutting, recitals (78) to (80) of the provisional Regulation are confirmed.

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

In the absence of comments contesting the figures and trends describing the development of the injury indicators the findings in recitals (81) to (100) of the provisional Regulation are maintained.

#### 4.5. Conclusion on injury

- (75) The economic performance of the Union industry was assessed by the examination of all the economic factors specified in Article 3(5) of the basic Regulation. All economic indicators (with the exception of market share and production capacity) deteriorated during the period considered. It is important to stress that in order to establish injury not all injury indicators have to show injurious trend as none of them is decisive in accordance with Article 3(5) of the basic Regulation.
- (76) In particular, the investigation established that due to the high volumes of dumped Chinese imports that were significantly undercutting the Union prices (by 21,1 % during the investigation period) the Union industry had no other choice than to decrease its sales prices despite its worsening cost situation. This decrease in the sales prices had a direct negative impact on its profitability, cash-flow, investments and return on investment. The significant deterioration of those injury indicators is therefore a clear sign of material injury that is caused by the Chinese dumped imports. The interested party provided no new evidence or argument to contest this conclusion.
- (77) The interested party questioned whether the Union industry was indeed forced to reduce its prices to maintain its market share since despite the 21,1 % undercutting it only reduced its prices by 7 %.
- (78) In response to this claim it is important to underline that price undercutting is not a pure price comparison but follows the methodology as described in recitals (78) to (80) of the provisional Regulation and therefore its magnitude is not necessarily reflected in the price development of the Union industry. In any case, it is recalled that the Union industry was forced to continuously reduce its prices throughout the period considered despite its worsening economic situation and becoming loss making already in 2013. In this light, a 7 % price decrease cannot be considered as non-significant.
- (79) Based on the above, the conclusion reached in recital (106) of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation is confirmed.

### 5. CAUSATION

#### 5.1. Effect of the dumped imports

- (80) Some parties claimed that certain indicators such as production capacity do not follow an injurious trend and others such as sales volume, market share, and sales price level had to be analysed in the context of a decreasing consumption during the period considered.
- (81) As far as production capacity is concerned it indeed remained stable throughout the period considered. This is due to the fact that the Union industry consists of a single producer which has an integrated production facility composed of carefully aligned production steps which limit the possibility of sudden capacity reductions without major and costly rearrangements. The Union industry nevertheless mitigated the effects of the decline in demand by extended shut-downs of production as explained in recital (84) of the provisional Regulation. Moreover, the Union industry decreased its fixed cost to mitigate the effect of decrease in demand on the cost of production.
- (82) Following the final disclosure one interested party claimed that no details were provided as to how the Union industry decreased its fixed costs. In addition, that interested party also claimed that any decrease in fixed costs were marginal at best. That interested party argued that the Union industry failed to adapt to a changing Union market and that consequently any injury suffered was self-inflicted.
- (83) In response, the Commission recalls that details on the decrease of fixed costs carried out by the Union industry were provided in recital (84) of the provisional Regulation. In addition, the Union industry adapted to the

decrease in demand by adjusting its production process to a lower out-put rate. The Commission analysed carefully the development of fixed costs during the period considered. The investigation found that the Union industry managed to reduce its overall fixed costs significantly and as a result in the same period the fixed cost per ton increased only by 24 %. Had the Union industry not taken the actions above and those described in recital (84) of the provisional Regulation fixed costs would have increased by 66 %. In the light of this the Commission maintains its conclusion that the Union industry did take appropriate action to adapt to the decrease in sales and managed to reduce its fixed costs significantly. Based on above, the claim that injury is self-inflicted is not confirmed by the findings of the investigation and is therefore rejected.

- (84) The investigation established that the prices of the dumped imports from the PRC decreased by 12 % during the period considered. This pricing behaviour cannot be explained by the development of raw material prices. It is also important to stress that dumped Chinese imports represent a major proportion of sales in the Union market and thus have an important impact on that market, which is the core market of the Union industry. Moreover, as stated in recital (76) the margin by which the Chinese imports were undercutting the Union industry prices was as high as 21,1 % during the investigation period. Consequently, the Union industry had no choice other than decreasing its sales prices to remain sufficiently attractive and limit the loss in its sales volume and market share. The Commission has collected evidence on contract negotiations involving users and distributors of aspartame showing that the price of the Chinese imports is used to put pressure on the Union industry. This had a direct negative impact in particular on the Union industry's profitability, cash-flow, investments and return on investment. The deterioration of these injury indicators is therefore directly linked to the dumped Chinese imports and this link is not altered by the decrease in the Union consumption.
- (85) With respect of recital (110) of the provisional Regulation one party claimed that the source of the statistics on the raw material price development should be made public and questioned the finding that the two main raw materials cover only 25 % of the total cost of production of the product concerned/the like product. Based on the party's cost data these two raw materials would constitute close to 50 % of the total cost of production of the exporting producers and therefore the Commission should reconsider the conclusions reached in recital (110) of the provisional Regulation.
- (86) The information concerning the raw material prices was obtained from CCM and an open summary thereof was put in the non-confidential file for consultation by interested parties following the comments received after the publication of the provisional Regulation.
- (87) As explained in recital (110) of the provisional Regulation the product concerned/the like product is produced by mixing two amino-acids (L-aspartic and L-phenylalanine) more or less in equal quantities. Upon receipt of additional statistics covering the IP as opposed to the calendar year 2014 the price development of the raw materials were revised. During the period considered the price of L-aspartic increased by 1 % and that of L-phenylalanine decreased by 23,6 %. However, this revision of the raw material price did not alter the conclusion reached at provision stage that these two amino-acids together represent about 25 % of the total cost of production for the Union industry. This is also in line with the data of the analogue country producer. Contrary to the claim of the interested party its cost data was not verified by the Commission since it was not subject to market economy treatment. As a result, its costs data cannot be taken into account. Therefore, the finding that the two main raw materials represent roughly 25 % of the total cost of production of the product concerned/the like product is maintained as stated in recital (110) of the provisional Regulation.
- (88) Based on the updated statistical data the maximal impact of the cost of raw material on the cost/price developments of the product concerned and like product is a 4,6 % decrease. However, the investigation showed that decrease in the price of the product concerned was 12 % during the investigation period as stated in recital (77) of the provisional Regulation. Therefore, contrary to the interested party's claim the raw material price decrease cannot explain in a meaningful way the price decrease of the product concerned and therefore does not modify the conclusion reached in recital (110) of the provisional Regulation; i.e. the Chinese exporting producers were practicing a rather aggressive pricing behaviour in the Union market and caused material injury to the Union industry.
- (89) Another party claimed that the fact that the Union industry was able to maintain its market share is a clear indication that imports from PRC are not causing any injury to the Union industry.
- (90) With regard to this claim it has to be stated that the evolution of the market shares is only one of the considerations in the casual link analysis. Also, the fact that the significant price pressure exerted by the Chinese imports

during the period considered has not yet translated into a loss of market share for the Union industry, and thus that both the Chinese exporting producers and the Union industry maintained their market share seem to indicate that the Union market is more rigid than it would have been expected for a commodity product. The product concerned/the like product plays a rather marginal role in the cost of production of users (below 3 %) while at the same time in the food and pharmaceutical industry suppliers are subject to very lengthy and expensive certification processes. This means that — at least until the end of the investigation period — most users preferred to stick to already certified and trusted suppliers rather than embarking on a certification process based on price quotations.

- (91) Following the final disclosure, one interested party claimed that the Union industry reduced its prices during the period 'only' by 7 % out of which 4,6 % is due to the fall in raw material prices. According to the interested party therefore the real cause for the sales price decrease is the raw material price development. In addition, that interested party annualised the price decrease due to other factors, namely 2,4 %, observed during the period considered and arrived to 0,056 Euro per kg per year. From this, the interested party concluded that it is in the same range as the price difference observed in the packaging materials which was deemed negligible by the Commission in recital (66). On this basis, the interested party claimed that the price impact of other factors cannot be deemed material.
- (92) In response to this claim it is important to clarify that in recital (88) the Commission established that the raw material price development could have explained a maximum 4,6 % decrease in the price of the product concerned. This is a theoretical maximum and does not mean that prices should necessarily decrease by the same margin in the same time period. This is especially true for a product like aspartame which is not sold based on ad hoc prices but rather through annual or multi-annual sales contracts with fixed prices. The investigation established that the Union industry was subject to continuous and strong price pressure from the Chinese dumped imports and that it was forced to reduce its sales prices despite an overall worsening cost structure. Moreover, the annualised approach submitted by the interested party cannot be accepted. Due to the yearly fluctuations observed in both the sales and raw material prices this annualised approach does not reflect the economic reality and is methodologically not correct. At the same time, the price difference in the packaging materials is a real difference in a given year and as such is indeed negligible in view of the price of the product concerned.
- (93) Based on all above, the Commission considers that there is sufficient evidence on file concerning the price pressure and its material negative impact on the Union industry.
- (94) In absence of any other comments concerning the effects of the dumped imports on the situation of the Union industry mentioned in recitals (108) to (113) of the provisional Regulation, these findings are confirmed.

## 5.2. Effect of other factors

- (95) Several interested parties claimed or maintained that any material injury suffered by the Union industry was caused by the decrease in Union consumption. In this regard one interested party claimed that the decrease in consumption is caused by the increased competition from other sweeteners in particular acesulfame potassium ('Ace-K') and by the increased health concerns associated with the product concerned and the like product. Furthermore some interested parties also claimed that the material injury suffered by the Union industry was caused by its deteriorating export performance and/or was self-inflicted due to failure of the industry to adapt to the decrease in demand.
- (96) One party also stated that the losses of the Union industry are attributable to the considerable impairment booking which had a negative impact on the Union industry costs and explains the losses of the Union industry. One party claimed the sale of the Union producer shortly after initiation of the present investigation was not taken into account during the assessment of the cause of the injury.

## 5.2.1. Consumption

- (97) As already acknowledged in recitals (121) and (122) of the provisional Regulation the decline in the Union consumption may have contributed to the injury suffered by the Union industry. The investigation however did not find that this decrease was sufficient to explain the extent and depth of the injury suffered by the Union industry and therefore it could not break the causal link between the dumped Chinese imports and the injury suffered by the Union industry.
- (98) With regard to the claim that the Commission failed to assess the impact of other sweeteners and in particular that of Ace-K on the aspartame market, it was not demonstrated why and how the allegedly more adverse injury figures in the case of Ace-K <sup>(1)</sup> is a relevant consideration for this investigation.
- (99) More importantly, the investigation found that although some replacement among different sweeteners is taking place this is rather limited given that the development and approval of new formulas is a risky, time-consuming, and costly process. In any event, the duties imposed on Ace-K originating from the PRC may only strengthen the current market position of the product concerned and the like product on the Union market rather than affecting negatively and solely the Union industry as claimed.
- (100) Following the final disclosure, the interested party reiterated its argument that the main cause of injury is the decline in consumption due to health concerns and the resulting replacement with other sweeteners including Ace-K. The interested party found the Commission's conclusion that replacement among sweeteners is limited contradicts the provisional Regulation and reiterated its claim that the Commission failed to address the conclusions of the anti-dumping investigation against Ace-K and their impact on the current investigation.
- (101) In recital (97) the Commission concluded that the effects of the decrease in consumption and their limited impact cannot explain the injury suffered by the Union industry. The interested party provided no new information in this regard and therefore the claim that the decline in consumption breaks the causal link is rejected.
- (102) In absence of any other comments regarding the decreasing consumption the conclusions reached in recital (122) of the provisional Regulation are confirmed.

## 5.2.2. Export performance

- (103) Table 10 of the provisional Regulation contained a clerical error (instead of the indexes of the average export prices it showed the indexes of the price levels observed on the Union market). In spite of this clerical error the analysis and conclusions were based on the correct figures. The corrected price indexes are as follows:

Table 10

**Export performance of the Union industry**

	2011	2012	2013	2014	IP
Average price Index	100	89	101	97	94

Source: Data provided by Union industry

<sup>(1)</sup> Commission Implementing Regulation (EU) 2015/1963 of 30 October 2015 imposing a definitive anti-dumping duty on imports of acesulfame potassium ('Ace-K') originating in the People's Republic of China (OJ L 287, 31.10.2015, p. 52).

- (104) With regard to the claim that the export performance of the Union industry caused the injury, it is recalled that as explained in recital (115) of the provisional Regulation, this factor was found to contribute to the injury suffered indeed. However, as explained in recitals (116) and (118) of the provisional Regulation, it was not found to break the causal link. It is recalled that the investigation found that during the investigation period the share of the production that was exported was substantially smaller than the share of the production sold on the Union market.
- (105) In addition, it is also worth to mention that the investigation revealed that it was the PRC who managed to squeeze the Union industry out of other third markets. Available statistics <sup>(1)</sup> show that on the main export destinations of the Union industry, such as Brazil, Argentina, Mexico and Turkey, the PRC was selling significant and increasing quantities on prices similar or even lower than on the Union market. One cannot disregard the overall, global situation according to which the PRC is practically taking over the worldwide supply of this product <sup>(2)</sup>. Chinese exporters were undercutting significantly the Union industry also on third markets. Provided that there are practically no other players on the world market except for Japan, which is selling considerably lower quantities at significantly higher prices than the PRC on the main export destinations of the Union industry, it is safe to conclude that the loss in export sales volumes and prices was also mainly due to the pricing behaviour of Chinese exporting producers.
- (106) Following the final disclosure, interested parties requested the Commission to demonstrate in quantifiable terms how the impact of the decline in Union consumption and export performance were limited and did not break the causal link.
- (107) The Commission recalls that in accordance with Article 3(7) of the basic Regulation, factors other than the dumped imports are evaluated and their injurious effects should not be attributed to the dumped imports. Therefore, it is not excluded that other factors contribute to the injury of the Union industry. But Article 3(7) of the basic Regulation does not require any quantification of the contribution of the other factors.. By distinguishing and separating the effects of other factors, the Commission complied with its obligation under Article 3(7) of the basic Regulation
- (108) In absence of any other comments regarding the export performance of the Union industry the findings in recitals (114) to (118) of the provisional Regulation are confirmed.

### 5.2.3. *Self-inflicted injury*

- (109) In reply to the argument that the injury suffered by the Union industry was self-inflicted it needs to be stated that this argument was addressed in recital (81) above. In any case, given that the Union industry's total production capacity is still well below the Union consumption one cannot speak of self-inflicted injury due to general overcapacity.

### 5.2.4. *Various other factors raised by interested parties*

- (110) As for the claim of the interested party concerning the impairment booking, it is recalled that the impairment booking in the accounts of the Union industry was not taken into account for the cost and profitability assessments as stated in recital (98) of the provisional Regulation.
- (111) Regarding the claim that the sale of Union producer should have been assessed in the causation analysis the following needs to be pointed out. The interested party fails to demonstrate in what sense the change in the ownership of the Union industry should have been taken into consideration during the causation analysis. The previous owner, Ajinomoto Co. has always had its core production facility in Japan where it recently developed a new production method. Ajinomoto Co. made a business decision to consolidate its aspartame production bases in Japan. The investigation confirmed that the new owner supports fully the complaint and is committed to continue producing aspartame as it was stated in recital (68) of the provisional Regulation.

<sup>(1)</sup> The statistics were obtained from the Chinese Export Database and are available in the open file for consultation by interested parties.

<sup>(2)</sup> The sole producer in the United States left the market in 2014 citing low-cost imports as the main reason: Nutrasweet to exit artificial sweetener aspartame business of 24 September 2014, [www.cnn.com/2014/09/24/](http://www.cnn.com/2014/09/24/). According to market information South Korea has been scaling down its production volumes and is poised to cease production altogether in the near future.

- (112) Following the final disclosure, the interested party claimed that, since the intention to sell the Union production facility was already known in 2014, the owner of that production facility failed to make the necessary adjustments and investments/improvements to adapt to difficult market conditions. The interested party claimed that that issue was not duly assessed by the Commission in the causation analysis.
- (113) In reply to that claim, the Commission recalls that the investigation did look into the actions of the Union producer and concluded that a number of measures were taken to mitigate the negative effects of the declining market and the Chinese dumping. Conclusions in that regard can be found in recital (83). Table 8 of the provisional Regulation shows that, investments, although decreasing, were still being made and even increased in some years during the period considered. Moreover, it is clear that Ajinomoto had a strong interest not to negatively impact the business of the Union producer since it intended to sell the company as a going concern. In light of above, it is considered that the sale of the Union producer was sufficiently analysed and that there is no evidence on file to support the claims of the interested party.
- (114) In absence of any other comments raised concerning recitals (119) and (120), (123) and (124) and (126) and (127) of the provisional Regulation, the conclusions reached therein are confirmed.

### 5.3. Conclusion on causation

- (115) The investigation showed that the continuous price pressure of Chinese imports combined with their strong presence on the Union market caused material injury to the Union industry. The already low prices of Chinese imports decreased markedly during the period considered and this price decrease could not be fully explained by the trends in the raw material prices. The depressed prices had a direct negative impact on the Union industry's profitability and contributed to it becoming loss-making on the Union market.
- (116) Based on the above the Commission maintains its conclusion that dumped imports have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.
- (117) The Commission carefully considered the effects of all other known factors that could have an adverse impact on the situation of the Union industry. It is acknowledged that certain factors (decline in Union consumption and export performance of the Union industry) may have contributed to the injury suffered by the Union industry. Their impact was limited in scope or in depth or both and therefore they did not break the causal link between the dumped Chinese imports and the injury suffered.
- (118) The conclusion reached in recitals (128) to (131) of the provisional Regulation is therefore confirmed.

## 6. UNION INTEREST

- (119) One interested party claimed that imposition of measures would be against the Union interest as the proposed measures would effectively close the Union market from the Chinese exporting producers leaving users with a single source of supply (i.e. the Union industry). According to the interested party, this also means that the measures would put the Union industry into a dominant market position which it will be fully able to take advantage of. Parties also questioned the coincidence in time between the sale of complainant and submission of complaint.
- (120) The Commission does not agree with this argumentation. In addition to the PRC there is also considerable production in Japan. This means that there are alternative sources available to the users. Even more importantly, the claim that the measures proposed would close the market from the Chinese producers is neither substantiated nor supported by the findings of the investigation. The proposed duties were calculated based on the verified figures of all stakeholders involved in this case. Based on the price levels observed during the investigation period, the duties will only remove the effect of unfair and unsustainable trade practices on the Union price level. The fact that there is a single producer in the Union does not mean that it is in a dominant position and there is no indication that it would abuse it even if it obtained such a position in the future given the existence of alternative sources of supply such as the PRC and Japan. It is expected that upon the imposition of measures the

Union industry will be able to increase production and sales volume in a market governed by effective competition. The prices charged by Chinese exporters should increase and the Union industry will be relieved from the severe price pressure they currently exert on the Union market. Finally, the parties failed to demonstrate in what sense the coincidence in time between the sale of the Union production facilities and the submission of the complaint would impact the Union interest. In any case, the Commission considers that this issue has no influence on the assessment of the Union interest. These claims are therefore considered unfounded.

- (121) On the other hand, it is worthwhile to stress that the investigation found that if the current trade practices are allowed to continue the Union industry in all likelihood will be forced to quit the market altogether leaving users with the only alternative of importation which is certainly not in the Union industry interest. The Commission considers that the maintenance of production in the Union is essential for competition purposes.
- (122) Following the final disclosure, one interested party claimed that given the low transaction value of the sale of the Union industry, the owner could not ensure with certainty the future for aspartame.
- (123) That claim is purely speculative. In any case, the Commission notes that production of aspartame has continued following the change of ownership. The Commission carefully analysed the interest of all interested parties and as explained in recital (144) of the provisional Regulation, concluded that the imposition of measures is justified and is not against the interest of the Union as a whole.
- (124) In the absence of other comments on the Union interest, the findings and conclusions reached in recitals (133) to (145) of the provisional Regulation are maintained.

## 7. DEFINITIVE ANTI-DUMPING MEASURES

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

- (125) One interested party requested the Commission to segregate the injury caused by the dumped imports and by the export performance and to calculate a separate injury margin for these two factors. This party also requested that an adjustment were made to the non-injurious price to counter the increase in fixed costs due to the decline in production volume. The party proposed to use the costs observed under the best production capacity utilisation of the Union industry in the three years prior to the investigation period. Finally, this party also requested that an adjustment were made to the non-injurious price that was allegedly inflated by raw materials purchased on transfer prices.
- (126) As explained in sections 4 and 5 above in relation to injury and causation, the Commission found that the conditions for determining injury and causation as stipulated in Articles 3(1) to 3(7) are met. Calculation of separate injury margins for the different factors contributing to the injury is not a legal requirement and is not in the Commission's practice. The Commission duly distinguished and separated the effects of others factors contributing to the injury from the effects of the dumped imports. The Commission found that the other factors did not break the casual link between the dumped imports and the injury of the Union industry.
- (127) Next, the non-injurious price is established for the investigation period on the basis of data related to the investigation period, this applies to all parameters, including capacity utilisation. Finally, the claim that raw materials were purchased on transfer prices from related parties by the Union industry were not confirmed by the investigation. On the contrary, the investigation clearly established (as it was also mentioned in recital (125) of the provisional Regulation) that the Union industry purchased raw materials on market prices throughout the period considered.
- (128) One interested party claimed that the Commission should investigate whether the worldwide fall in raw material prices translated into a fall raw material prices for the Union industry. It claimed that if the raw prices are higher than on the international market the injury calculation should be adjusted accordingly. In this respect the Commission recalls that in recital (125) of the provisional Regulation it concluded that the Union industry purchased raw materials at arm's length basis and no new elements was brought that would question its conclusion.

- (129) Based on the considerations above the requests regarding the adjustments to the non-injurious price are rejected. In the absence of any other comments on the injury elimination level the methodology applied at provisional stage as explained in recitals (147) to (152) of the provisional Regulation is maintained.

## 7.2. Definitive measures

- (130) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on imports of aspartame originating in the PRC. In accordance with the lesser duty rule in this case the measures should be imposed at the level of the lower of these margins.
- (131) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin %	Injury margin %	Definitive anti-dumping duty %
Changmao Biochemical Engineering Co., Ltd	124,0	55,4	55,4
Sinosweet group	126,0	59,4	59,4
Niutang group	121,4	59,1	59,1
All other cooperating companies	124,6	58,8	58,8
All other companies	126,0	59,4	59,4

- (132) 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.
- (133) 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*.
- (134) 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.

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

### 7.3. Undertakings

- (135) Following final disclosure, several exporting producers and the Chinese Chamber of International Commerce (CCOIC) expressed an interest in submitting price undertaking offers or a joint undertaking offer. However, only one company submitted a sufficiently substantiated undertaking offer within the deadline set in the Article 8 of the basic Regulation. The minimum import price proposed was composed of a variable element reflecting the price trend of the main raw material cost (i.e. L-Phenylalanine) and a fixed element reflecting the remaining costs.
- (136) The Commission assessed the offer and identified a number of product specific risks.
- (137) Aspartame is sold to large customers who purchase it in significant quantities inside and outside the Union through global contracts. Exporters would be able to compensate the increase in the Union prices by lowering their prices to third countries. Hence, such compensation would nullify any remedial effect. This issue is particularly acute in the present case, as it would be impossible (or at least very difficult) to detect the compensation.
- (138) Moreover, the prices of the raw materials of aspartame are volatile as explained in recital (110) of the provisional Regulation. Price undertakings are not effective remedies as regards products with volatile cost of production. In times of decreasing costs, they prevent exporters from reacting to market forces. This fluctuation is confirmed, as shown by the latest export statistics, where Chinese aspartame prices have been found steadily decreasing.
- (139) Finally, as none of the companies was granted 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.
- (140) On the basis of the above, the Commission concluded that undertaking offers could not be accepted.

### 7.4. Definitive collection of the provisional duties

- (141) 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.
- (142) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of aspartame (N-L- $\alpha$ -Aspartyl-L-phenylalanine-1-methyl ester, 3-amino-N-( $\alpha$ -carbomethoxy-phenethyl)-succinamic acid-N-methyl ester), CAS RN 22839-47-0, originating in the People's Republic of China, currently falling within CN code ex 2924 29 98 (TARIC code 2924 29 98 05).

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

Company	Definitive anti-dumping duties	TARIC additional code
Changmao Biochemical Engineering Co., Ltd	55,4 %	C067
Sinosweet group: Sinosweet Co., Ltd, Yixing city, Jiangsu Province, the PRC, and Hansweet Co., Ltd, Yixing city, Jiangsu Province, the PRC.	59,4 %	C068

Company	Definitive anti-dumping duties	TARIC additional code
Niutang group: Nantong Changhai Food Additive Co., Ltd, Nantong city, the PRC, and Changzhou Niutang Chemical Plant Co., Ltd, Niutang town, Changzhou city, Jiangsu Province, the PRC.	59,1 %	C069
All other cooperating companies:		
Shaoxing Marina Biotechnology Co., Ltd, Shaoxing, Zhejiang Province, the PRC	58,8 %	C070
Changzhou Guanghui Biotechnology Co., Ltd, Chunjiang Town, Changzhou city, Jiangsu Province, the PRC	58,8 %	C071
Vitasweet Jiangsu Co., Ltd, Liyang City, Changzhou City, Jiangsu Province, the PRC	58,8 %	C072
All other companies	59,4 %	C999

3. Where any exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- (a) it did not export to the Union the product described in Article 1(1) during the investigation period (1 April 2014 to 31 March 2015);
- (b) it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation; and
- (c) it has actually exported to the Union the product concerned after the investigation period or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

the Table in Article 1(2) may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of the companies in the sample.

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 Commission Implementing Regulation (EU) 2016/262 shall be definitively collected.

#### Article 3

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

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

Done at Brussels, 28 July 2016.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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