II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 July 1993

accepting undertakings offered in connection with the review of anti-dumping measures applicable to certain imports of monosodium glutamate originating in Indonesia, the Republic of Korea, Taiwan and Thailand

(93/479/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Articles 10 and 14 thereof,

After consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EEC) No 1798/90 [2], as amended by Regulation (EEC) No 2966/92 [3], imposed a definitive anti-dumping duty on imports of monosodium glutamate (hereinafter referred to as 'MSG') originating in Indonesia, the Republic of Korea, Taiwan and Thailand with the exception of imports from certain producers in these countries from which the Commission accepted undertakings by Regulation (EEC) No 547/90 [4] and Decision 92/493/EEC [5].

B. INITIATION OF A REVIEW PROCEEDING

(2) The Community industry during the original investigation period (1 April 1987 to 31 March 1988) comprised of three producers representing the total production of MSG in the Community. Following the adoption of anti-dumping measures in this proceeding, two of these producers closed down.

Furthermore, the sole remaining producer in the Community, which constitutes the Community industry in this review proceeding, argued that because of the substantial changes in the value of the US Dollar, the currency in which most of the trade of MSG is carried out, against the ECU, the prices in the undertakings accepted by the Commission, which are expressed in ECU, have been rendered insufficient to eliminate the injurious effects of continued dumping. The alleged impact on this producer was a continuation of financial losses and a significant deterioration in cash flow.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 167, 30. 6. 1990, p. 1.
[3] OJ No L 299, 15. 10. 1992, p. 1.
[4] OJ No L 56, 3. 3. 1990, p. 1.
[5] OJ No L 299, 15. 10. 1992, p. 40.

(3) Accordingly, by a notice published in the *Official Journal of the European Communities* (1), the Commission, after consultation within the Advisory Committee and in accordance with Article 14 of Regulation (EEC) No 2423/88, initiated a review of the Regulations and the Decision which imposed anti-dumping measures in the framework of the proceeding and reopened the investigation.

C. SUBSEQUENT PROCEDURE

(4) The Commission officially informed the parties known to be concerned, in particular the producer and the importers in the Community, the producers in the exporting countries concerned and the representatives of these countries. It gave the interested parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(5) The Community industry, some producers in the exporting countries, and some importers and a federation of industrial users in the Community made their views known in writing. Some producers in the exporting countries concerned requested and were granted a hearing.

(6) In reviewing the anti-dumping measures in force, the situation of the Community market during the period from 1 January to 30 September 1992 was compared to that in the previous three years i.e. in the periods before and after the imposition of anti-dumping measures in this proceeding.

(7) The information requested and obtained from the producer concerned in the Community, Orsan SA, was verified at its premises in Nesle and Paris, France. The analysis of the volume and price of the imports concerned was based on data obtained from Eurostat statistics and on the information periodically provided by the exporting producers in the framework of the requirements in the undertakings currently in force.

D. PRODUCT CONCERNED

(8) The product concerned by this review is the same as that covered by the previous investigations in the proceeding, i.e. MSG produced in the form of crystals of various sizes, falling within CN code ex 2922 42 00.

(1) OJ No C 286, 4. 11. 1992, p. 3.

E. SCOPE OF THE REVIEW

(9) This review was limited to an examination of the extent to which the measures in force should be amended to reflect any changed circumstances in the situation of the Community industry. The Commission had no reason to believe that the dumping situation had changed given that no interested party requested a review of the findings on dumping as confirmed by Regulation (EEC) No 1798/90.

F. ANALYSIS OF THE COMMUNITY MARKET

(i) Consumption in the Community

(10) Community consumption of MSG was approximately 43 000 tonnes in 1989, 44 000 tonnes in 1990, 48 000 tonnes in 1991 and 37 000 tonnes during the first nine months of 1992. This represents an increase of 14,7 % over that period.

(ii) Volume of the dumped imports

(11) The volume of the dumped imports from the countries concerned increased from nearly 3 800 tonnes per year in 1989 and 1990 to 12 183 tonnes in 1991 and to 9 696 tonnes during the first nine months of 1992 i.e. by 240 % over that period. The combined Community market share of these imports also increased from nearly 8,7 % in 1989 and 1990 to 25 % in 1991 and to 26,1 % during the first nine months of 1992.

(iii) Price of the dumped imports

(12) In spite of the fact that the exporters in the countries concerned have respected the minimum prices in the undertakings accepted by the Commission, when expressed in US Dollars, the difference between the US Dollar/ECU exchange rate as provided for in the undertakings currently in force and that subsequent to the acceptance of these undertakings has resulted in ECU prices of the imports concerned lower by up to 20 % than those set in the said undertakings.

(iv) Situation of the Community industry

(a) *Preliminary comments*

(13) In assessing the situation of the Community industry, it should be noted that the manufacture of MSG is an industry requiring high investments in which most of the processing is continuous and involves a large proportion of fixed costs. The economics of this industry requires production at full capacity to maximize economies of scale.

(b) *Production, capacity utilization, sales and market share*

(14) Since 1989, the production volume of the Community industry has remained stable and the capacity installed has been fully utilized. The volume of sales in the Community of the product concerned by the Community industry increased by 13 % from 1989 to the first nine months of 1992 extrapolated on an annual basis. However, this development of sales volume, compared to that of the apparent Community consumption, shows a market share held by the Community industry which decreased by 4,5 % from 1989 to the first nine months of 1992. The evolution of this market share was, on an indexed basis, 100 in 1989, 105 in 1990, 101 in 1991 and 95,5 in the first nine months of 1992.

(c) *Prices*

(15) Since the imposition of the anti-dumping measures, the Community industry has increased its prices for the product concerned in the Community market. However, given that MSG is a highly price sensitive commodity product, the Community industry concerned was forced to align its prices to those of the imports in question which, as mentioned in recital (12) above, due to the changes in the exchange rates, were lower than the level of prices in ECU terms set in the undertakings. Consequently, the Community industry was prevented from increasing its prices up to an adequate level.

(d) *Profitability*

(16) The costs of production of the product concerned incurred by the Community industry have remained rather stable between 1989 and the first nine months of 1992. This, combined with an increase in prices over the same period, led to a progressive reduction of losses. Indeed, this trend in costs and prices has put the Community industry back into profit during the first nine months of 1992, even if the profitability achieved is totally insufficient to ensure the viability of the business. On an indexed basis, the return on turnover of the Community industry with regard to the Community market was as follows : losses of 100 in 1989, losses of 60 in 1990, losses of 13 in 1991 and profits of 10 in the first nine months of 1992.

(e) *Investments*

(17) Since 1989 the Community industry financed substantial investments merely intended to maintain its production levels. Although a substantial part of the profits generated in recent years has been reinvested, the losses or insufficient profits made by the Community industry threaten the continuation of its investment programme and thus its competitiveness.

(f) *Conclusion on the situation of the Community industry*

(18) The examination of the facts available shows that, notwithstanding certain positive effects of the anti-dumping measures currently in force on the Community industry, the financial situation of that industry remains precarious while its market share has continued to decline.

G. CAUSALITY

(i) Imports of MSG from the countries concerned

(19) In examining whether the dumped imports from the countries concerned were responsible for the continuing poor situation of the Community industry, the Commission noted the fact that this situation coincided with a substantial increase in imports of MSG from the countries concerned as stated in recital (11) and with a decrease in the price of these imports. As far as the latter is concerned, the price decrease results from the US Dollar/ECU exchange rate changes as outlined in recital (12).

(ii) Effect of other factors

(20) The impact on the situation of the Community industry of factors other than the imports concerned was also examined.

(21) Some interested parties claimed that the difficult situation of the Community industry was due to its low priced exports to countries outside the Community. In this respect, the Commission recalls that its examination of the relevant injury factors exclusively concerned those relating to the production and sales on the Community market. Any effects of the Community industry's sales performances outside that market do not form part of the findings on injury. Consequently, the difficult situation found for the Community industry as described above cannot have been caused by such exports. This argument has, therefore, to be rejected.

(22) As to imports of MSG from third countries other than those covered by the proceeding, only those originating in Brazil, because of their current penetration of the Community market (i.e. 2 980 tonnes during the first nine months of 1992 representing a market share of 8 %), could have had some adverse effects on the Community industry. However, even if it was admitted that imports from Brazil had contributed to the injury still being suffered by the Community industry, this would not alter the fact that the injury caused by the dumped imports concerned, taken in isolation, is material.

(23) In these circumstances, the Commission has concluded that prices of the imports from the countries concerned have continued to adversely affect the situation of the Community industry.

H. COMMUNITY INTEREST

(24) The Concil, in Regulation (EEC) No 1798/90, confirmed that it was in the Community interest that measures be imposed on imports of MSG from the four countries concerned.

(25) In the particular circumstances of this review, it is considered that failure to maintain the anti-dumping measures in force, duly amended to take account of the improvement in the situation of the Community to take account of the improvement in the situation of the Community industry, would seriously affect that industry's investment programme, erode its competitiveness and thus threaten its viability.

(26) Some interested parties argued that any increase in the level of the anti-dumping measures currently in force would allow the Community industry to reinforce its strong position in the Community market to the detriment of the users of MSG in the Community. In this respect, it should be noted that, notwithstanding the significant share of the Community market held by the Community industry, there is sufficient competition in that market as demonstrated by the substantial increase in the market share held by the imports concerned between 1989 and the first nine months of 1992 and also by the recent significant penetration of Brazilian imports into the market. As to the impact of any amendment of the measures in force on the situation of the Community users of MSG, it has to be noted that this product has only a minor effect on the costs of the products in which it is used.

(27) The Commission also noted that the Community industry had financed substantial investments in recent years. The Commission considered it to be in the interest of the Community that the industry be allowed to benefit from this investment thereby ensuring the continued employment of a substantial number in the production of this essential commodity product for the food industry.

(28) In the light of the above, it is considered to be in the interest of the Community that the anti-dumping measures remain in force, duly amended, in order to give the Community industry the opportunity to continue to redress its precarious financial situation.

I. AMENDMENT OF THE MEASURES IN FORCE

(i) General

(29) In establishing the price level in ECU terms which would allow the Community industry sufficient profitability, the actual cost of production of the Community producer concerned was increased by a reasonable profit margin. This profit, while not reaching the level of profits made by that producer prior to the impact of the imports concerned, is considered to be the minimum necessary to ensure that considered reasonable by the Commission in the original investigation.

The price so constructed for the Community industry is higher than the actual prices of the imports concerned from each of the producers in the exporting countries when expressed in ECU terms. Accordingly, the anti-dumping measures in force should be amended so that the import prices in ECU terms from each of the exporting producers concerned reach the constructed price for the Community industry without exceeding the corresponding normal values determined in the previous investigations.

(ii) Exporting producers for which undertakings are in force

(30) Following the disclosure of the findings to the exporting producers concerned, they offered new undertakings with the exception of one company in Thailand which ceased exporting to the Community before 1992. The effects of these undertakings would be to revise prices of the imports from each producer up to the level of the price considered necessary to eliminate the injury to the Community industry caused by dumping, provided the normal values established in the previous investigations for these producers, adjusted to a Community frontier duty unpaid level, are not exceeded. As the undertakings offered are administratively feasible to monitor, it is considered that they should be accepted. While the price in these undertakings is established in ECU, since practically all imports into all Community are made in US Dollars, exchange rates have been provided to be used when imports are made in currencies other than the ECU. These exchange rates are adjusted on a half-yearly basis.

Moreover, in case of breach of these price undertakings, the Commission can impose provisional duties immediately and the Council can subsequently impose definitive duties based on the facts established in the present investigation.

(31) The Community industry concerned was informed at the main facts and considerations on the basis of which the Commission intended to accept the new undertakings and did not object.

(iii) Other producers in the exporting countries concerned

(32) For those producers in each of the countries concerned which did not make themselves known during the proceeding and the imports from whom are, therefore, subject to a definitive anti-dumping duty based on the findings on dumping confirmed by Regulation (EEC) No 1798/90, since the dumping situation has not been investigated in the framework of the present review, it is considered appropriate that the amount of the duty should remain unchanged.

(33) As to the company in Thailand which did not export to the Community during the first nine months of 1992 and which has not offered a new undertaking, no individual anti-dumping measures should be maintained.

K. CONSULTATION WITHIN THE ADVISORY COMMITTEE

(34) Objections to the acceptance of new undertakings were raised in the Advisory Committee by one Member State. Therefore, in accordance with Article 9 and Article 10 (1) of Regulation (EEC) No 2423/88, the Commission sent to the Council a report on the results of the consultations and a proposal that the undertakings be accepted and the investigation be terminated. As the Council has not decided otherwise within one month, the present Decision should stand adopted.

(35) As the current review has been of only a partial nature, the period of validity of the measures in force shall not be prolonged insofar as Article 15 (1) of Regulation (EEC) No 2423/88 is concerned,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission's acceptance of the undertakings referred to in Regulation (EEC) No 547/90 and Decision 92/493/EEC is hereby withdrawn.

Article 2

The price undertakings offered by the following companies:

— PT Sasa, Indonesia,
— PT Indomiwon Citra Inti, Indonesia,
— PT Cheil Samsung Astra, Indonesia,
— Miwon Co Ltd, Republic of Korea,
— Cheil Foods & Chemicals Inc., Republic of Korea,
— Tung Hai Fermentation Industry Corporation, Taiwan,
— Ve Wong Corporation, Taiwan,
— Thai Fermentation Industry Co., Thailand,

in connection with the anti-dumping proceeding concerning imports of monosodium glutamate falling within CN code ex 2922 42 00 (Taric code 2922 42 00 * 10) originating in Indonesia, the Republic of Korea, Taiwan and Thailand are hereby accepted.

Article 3

This Decision shall take effect from the day following its publication in the *Official Journal of the European Communities.*

Done at Brussels, 30 July 1993.

For the Commission

Leon BRITTAN

Vice-President