COMMISSION REGULATION (EEC) No 547/90

of 2 March 1990

imposing a provisional anti-dumping duty on imports of certain glutamic acid and its salts originating in Indonesia, the Republic of Korea, Taiwan and Thailand, and accepting undertakings in connection with imports of certain glutamic acid and its salts originating in these countries

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 Article 11 thereof,

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

Whereas :

A. PROCEDURE

(1) Following the receipt by the Commission of a complaint lodged by the Confédération Européenne des Fédérations des Industries Chimiques (CEFIC) on behalf of manufacturers representing all the Community production of the product concerned, containing sufficient evidence of dumping and material injury to justify the initiation of a proceeding, the Commission announced by a notice in the *Official Journal of the European Communities* (2) the initiation of an anti-dumping proceeding concerning imports of glutamic acid and its salts originating in Indonesia, the Republic of Korea, Taiwan and Thailand and began an investigation.

The product concerned is glutamic acid and its salts used mainly as a flavour enhancer in food products, such as soups and preserved fish and meat, falling within CN code 2922 42 00.

(2) The Commission officially notified the exporters and importers known to be concerned, the representatives of the exporting countries and the Community producers, and gave the parties directly concerned the opportunity to make known their views in writing.

(3) The Commission sought all information it deemed necessary from the following interested parties and verified it, where appropriate, by carrying out investigations at the premises of those parties :

(a) *Community producers*

Orsan S.A., Paris,
Biacor S.A., Padua,
Peniberica S.A., Pamplona.

(b) *Producers/exporters to the Community*

Indonesia :

— P.T. Ajinomoto Indonesia, Jakarta,
— P.T. Sasa, Jakarta,
— P.T. Miwon Indonesia, Jakarta.

Korea :

— Cheil Sugar Co. Ltd, Seoul,
— Seoul Miwom Co. Ltd, Seoul.

Taiwan :

— Tung Hai Fermentation Industry Corporation, Taichung,
— Ve Wong Corporation, Taipei,
— Wei-Chuan Foods Corporation, Taipei.

Thailand :

— Thai Fermentation Industry Co., Bangkok,
— S.C.T. Company, Bangkok.

(c) *Importers in the Community*

Denmark :

— K. Dirach Aps, Roskilde.

France :

— SAPA, Ezanville.

Germany :

— Henry Lamotte, Bremen,
— Tesco Chemie, Düsseldorf.

Greece :

— Boukaouris, Piraeus.

Italy :

— Olimpo, Milan,
— Ygmar, Milan.

Netherlands :

— Chemimpo BV, s'Hertogenbosch,
— DCT Chemie, Zwijndrecht,
— Leduc Chemie BV, Vught.

Spain :

— Preparados Alimenticios, S.A., Barcelona,
— Gallina Blanca, S.A., Barcelona,
— Sumex, S.A., Barcelona.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 147, 4. 6. 1988, p. 3.

United Kingdom :

— Unilever, London,
— Albright and Wilson, Warley,
— Protan Ltd, Alton.

(4) Several exporters and producers in the exporting countries and most importers failed to take advantage of the opportunity offered to them to defend their interests by providing the information requested in the questionnaires addressed to these parties and cooperating in the verification of the information.

(5) No submissions were made on behalf of Community consumers of glutamic acid and its salts.

(6) The period in which the extent of any dumping was investigated was 1 April 1987 to 31 March 1988.

(7) Owing mainly to the number of exporting countries involved, the investigation has exceeded the normal time for the completion of investigations.

B. DEFINITION OF THE PRODUCT

(8) The investigation showed that there is only very limited production and trade of glutamic acid and no exports were made to the Community in the investigation period. Instead, almost all production and trade is of monosodium glutamate, which is a sodium salt in the form of crystals or crystalline powder. As the only monosodium glutamate produced in the Community is in the form of medium and small crystals for industrial use, the investigation was confined to these grades. It is therefore appropriate to terminate the proceeding with regard to imports of glutamic acid and its salts, other than monosodium glutamate.

C. DUMPING

(9) For imports from the Republic of Korea and Taiwan, the normal value was provisionally established on the basis of the comparable prices actually paid or payable in the ordinary course of trade for the like product intended for consumption in those countries, adjustments being made, where appropriate, for discounts and rebates directly linked to the sales under consideration. Moreover, in order to effect a fair comparison, the sales considered were restricted to those made in bulk or in bags of 25 kg or over, since almost all the exports were made in bags of this size.

As regards imports from Indonesia and Thailand, it has been provisionally established that the prices of the sales of the producers and exporters for consumption in those countries were less than their cost of production, as defined in Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, and that such sales were made in substantial quantities, at prices which did not permit the recovery of all costs reasonably allocated during the investigation period. The normal values for the producers were therefore based on their own cost of production and selling, administrative and other expenses plus a reasonable profit rate of 6 % which was considered reasonable in the light of the profit rates normally realised in the same business sectors in these countries. Moreover, one exporter in Thailand neither produced nor sold monsodium glutamate on the domestic market in Thailand and the normal value for this exporter was therefore based on the costs of his supplier in accordance with Article 2 (3) (c) of Regulation (EEC) No 2423/88.

Export price

(10) In each case, the export price was based on the price actually paid or payable for export to the Community of 25 kg bags of the product under consideration, since almost all of the exports were made in bags of this size.

D. COMPARISON

(11) When comparing the normal value with the export price, due allowance was made for the differences affecting price comparability where the interested party could prove that his claim was justified; adjustments being made for this purpose in respect of transport, insurance, handling, loading and ancillary costs, packing costs, credit and salesmen's salaries.

E. DUMPING MARGIN

(12) The preliminary investigation of the facts revealed the existence of dumping, the dumping margins being equal to the difference between the normal value and the export price, duly adjusted. For those producers and exporters who cooperated in the investigation the resulting weighted average margins, expressed as a percentage of the price free Community frontier, were as follows :

Indonesia

— P.T. Sasa, Jakarta : 47,0 %

Republic of Korea

— Cheil Sugar Co. Ltd, Seoul : 12,1 %
— Seoul Miwon Co. Ltd, Seoul : 16,8 %

Taiwan

— Tung Hai Fermentation Industry : Corporation, Taichung : 42,6 %
— Ve Wong Corporation, Taipei : 54,3 %

Thailand

— Thai Fermentation Industry Co., Bangkok : 34,3 %
— S.C.T. Company, Bangkok : 34,7 %

For those exporters who did not make themselves known, or did not cooperate in the investigation, the provisional dumping margin was determined on the basis of the highest dumping margin found in respect of those exporters who did cooperate, the provisional dumping margin being determined separately for each exporting country.

F. INJURY

Volume and price of imports

(13) The volume of imports of monosodium glutamate from the four countries concerned increased from 2 797 tonnes in 1984 to 5 141 tonnes in 1987 and 5 506 tonnes in the first six months of 1988. This represented an increase in the share of these imports of the Community market for monosodium glutamate from 7,1 % in 1984 to 23,1 % in the first half of 1988.

(14) The prices of the imports into the Community from the countries concerned increased on average by 2,6 % between 1984 and 1985, though they fell substantially in 1986 and the fall continued up to and during the first six months of 1988. As a result, the average price of these imports in the Community in the first six months of 1988 was 29,1 % lower than the average for 1984, the decrease in the average price of imports from the individual countries concerned ranging from 22,6 % to 36 %.

Impact on the Community industry

(15) The share of the Community market held by Community producers fell from 91,2 % in 1984 to 74,9 % in the first six months of 1988, a reduction of 16,3 % in the period. This compares with an increase of 16,0 % of the share held by the imports.

(16) Although there was an increase in demand for monosodium glutamate in the Community between 1984 and the first six months of 1988, Community producers were compelled to reduce their prices in the period in an attempt to retain market share at a time when the average price of the dumped products decreased substantially when sold on the Community market. Due to this factor, the average price of the Community producers declined by 25,8 % throughout the period to a level which did not cover costs, the price depression being most significant from 1986 onwards.

(17) In spite of an increasing demand for monosodium glutamate in the Community, production by Community producers remained fairly stable in the period 1984 to 1987 at annual rates of between 53 000 and 55 000 tonnes. It fell to an annual rate of 42 000 tonnes in the first half of 1988, however, and though the decrease was due mainly to the temporary closure of the works of one of the Community producers, there was also a fall in production at the works of the other producers.

(18) The temporary closure of the works of one of the Community producers, referred to in recital 17, was due to the combined effect of loss of market share and depression of prices. This led to the closure of the works in June 1987 and the works were still closed at the end of the investigation period, i.e. 31 March 1988.

(19) Whereas the Community industry as a whole was in an overall profitable situation in 1984 and 1985, financial losses were incurred by all Community producers in 1986 and these became more, severe in 1987.

Cumulation

(20) In order to determine whether or not to cumulate the imports from all the countries concerned by the investigation, account was taken of the comparability of the imported products in terms of physical characteristics, the volumes imported, the level of prices and the degree to which they competed with the product produced in the Community. On this basis it was concluded that cumulation of the imports for injury purposes was justified.

Causality and other factors

(21) The evidence available shows that the loss of market share experienced by Community producers occurred at the same time as the imports were gaining increased market share. In addition, the price depression suffered by Community producers coincided with the decrease in the prices of the imports.

The Commission has also examined whether the injury suffered by the Community producers was due to other factors, such as imports originating in other third countries. In doing so, it took account of the fact that imports from Austria or Switzerland originated in the countries concerned in the investigation and were minimal. It also found that the imports from other third countries had a market share of only 1 % or less from 1984 to the first half of 1988 and no evidence was supplied to show that these imports had been made at dumped prices.

Conclusions

(22) In view of the circumstances outlined in recitals 12 to 20, the Commission has concluded that the effect of dumped imports originating in the countries concerned by the investigation has caused material injury to Community producers of monosodium glutamate.

G. COMMUNITY INTEREST

(23) In view of the serious financial losses being encountered by Community producers of monosodium glutamate, failure to adopt measures which would eliminate the injurious effect of the dumped imports would put at risk the industry's survival with the resulting adverse consequences on employment. The Commission has therefore concluded that it is in the Community's interest to prevent further injury being caused during the proceeding and that it is appropriate to impose a provisional anti-dumping duty.

In coming to this conclusion, the Commission took account of the fact that the cost of monosodium glutamate has only a minor impact on the cost of the foods in which it is used. The effect of the measure would therefore have no significant effect on the price of the foods to consumers.

H. PROVISIONAL DUTY

(24) When establishing the appropriate amount of the provisional duty, the Commission took account of the dumping margins provisionally established and the level of duty necessary to eliminate the injury. The injury threshold used for this purpose was based on the costs of the most efficient Community producer plus a reasonable rate of profit which, on a non-confidential basis, is less than 10 %. The appropriate amount of duty was then established by comparing the export prices with the injury threshold, the duty at cif level being equivalent either to the margin of dumping provisionally established or the difference between the injury threshold and the export price, whichever was less.

(25) In order to ensure the efficiency of the protective measures and to facilitate the task of customs clearance, the Commission has decided that the provisional duty should be in the form of a specific duty expressed in terms of ecus per kilogramme.

I. UNDERTAKINGS

(26) Following the disclosure of the Commission's provisional findings to those exporters and producers who cooperated in the investigation, undertakings were offered by them in respect of their direct exports to the Community, the effect of which would be to raise prices by an amount which in no case exceeds the dumping margins provisionally established and is sufficient to eliminate the injurious effects of the dumping. As the Commission considers that it is administratively feasible to monitor the undertakings efficiently, it has concluded that they should be accepted.

No objection was raised within the Advisory Committee to the acceptance of the undertakings.

J. FINAL RECITAL

(27) In the interests of sound administration, a reasonable period should be allowed for those parties who have cooperated in the investigation to make known their views of the Commission's provisional findings contained in this Regulation and to request a hearing,

HAS ADOPTED THIS REGULATION:

Article 1

The price undertakings offered by:

— P.T. Sasa, Jakarta,
— Cheil Sugar Co. Ltd, Seoul,
— Seoul Miwon Co. Ltd, Seoul,
— Tung Hai Fermentation Industry Corporation, Taichung,
— Ve Wong Corporation, Taipei,
— Thai Fermentation Industry Co., Bangkok,
— S.C.T. Compans, Bangkok,

are hereby accepted and the investigation concerning imports from these exporters is now terminated.

Article 2

1. A provisional anti-dumping duty is imposed on imports of monosodium glutamate falling within CN code 2922 42 00, originating in Indonesia, the Republic of Korea, Taiwan and Thailand (Taric additional code: 8400).

2. The amount of the duty shall be:

— ECU 0,510 per kg for imports originating in Indonesia.

Direct imports from P.T. Sasa, Jakarta, shall be excluded from the duty (Taric additional code: 8401).

— ECU 0,189 per kg for imports originating in the Republic of Korea (Taric additional code: 8402).

Direct imports from Cheil Sugar Co. Ltd, Seoul, and Seoul Miwon Co. Ltd, Seoul, shall be excluded from the duty (Taric additional code: 8403).

— ECU 0,653 per kg for imports originating in Taiwan (Taric additional code: 8404).

Direct imports from Tung Hai Fermentation Industry Corporation, Taichung, and Ve Wong Corporation, Taipei, shall be excluded from the duty (Taric additional code: 8405).

— ECU 0,407 per kg for imports originating in Thailand (Taric additional code: 8406).

Direct imports from the Thai Fermentation Industry Co., Bangkok, and S.C.T. Company Bangkok, shall be excluded from the duty (Taric additional code: 8407).

3. The provisions in force concerning customs duties shall apply.

4. Release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 3

The proceeding concerning imports of glutamic acid and its salts, other than monosodium glutamate, is hereby terminated.

Article 4

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make representations in writing and apply for a hearing by the Commission within one month from the entry into force of this Regulation.

Article 5

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2423/88, Article 2 of this Regulation shall apply for a period of four months or until the Council adopts definitive measures before the end of that period.

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

Done at Brussels, 2 March 1990.

For the Commission

Frans ANDRIESSEN

Vice-President