COMMISSION REGULATION (EC) No 1754/95

of 18 July 1995

imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia, the Republic of Korea, Taiwan and Thailand

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 1251/95 [2], in particular Article 23 thereof, which provides that 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 [3], as last amended by Regulation (EC) No 522/94 [4], shall continue to apply to proceedings in relation to which an investigation pending on 1 September 1994 had not been concluded by the date of entry into force of Regulation (EC) No 3283/94,

Having regard to Regulation (EEC) No 2423/88, and in particular Articles 10 (6) and 14 thereof,

After consultation with the Advisory Committee,

Whereas :

I. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EEC) No 1798/90 [5], as amended by Regulations (EEC) No 2966/92 [6] and (EEC) No 2455/93 [7], imposed a definitive anti-dumping duty on imports of monosodium glutamate 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 [8] and Decisions 92/493/EEC [9] and 93/479/EEC [10].

(2) During the review concluded by Regulation (EEC) No 2455/93 and Decision 93/479/EEC, all the companies were informed of the essential facts and considerations on which it was intended to amend the measures and were given the opportunity to make their views known. The Commission subsequently accepted price undertakings from all known exporters. Exports from these countries made by other exporters, which in this case were negligible, continued to be subject to anti-dumping duty.

(3) By a notice published in the *Official Journal of the European Communities* [11], the Commission, after consultation with the Advisory Committee and in accordance with Article 14 of Regulation (EEC) No 2423/88 (hereinafter referred to as the 'Basic Regulation'), initiated a review of the anti-dumping measures in force, following receipt of an application lodged by the Community industry. The application alleged, *inter alia*, that the monosodium glutamate originating in the countries concerned had been imported into the Community at prices lower than those required by the existing price undertakings and, therefore, that the price undertakings are not suitable measures in this proceeding. It should be noted that, with two exceptions, all exporters from which undertakings have been accepted cooperated in this review. The following exporters cooperated in this review :

Indonesia :

— PT Indomiwon Citra Inti,

— PT Jico Argung (related selling company of PT Indomiwon Citra Inti) ;

Republic of Korea :

— Cheil Foods & Chemicals Inc.,

— Miwon Co. Ltd,

— Miwon Trading & Shipping Co., Ltd (related selling company of Miwon Co. Ltd) ;

Taiwan :

— Ve Wong Corporation,

— Tung Hai Fermentation Ind. Corp. ;

Thailand :

— Thai Fermentation Industry Corporation.

(4) The product covered by the application and for which the review investigation was initiated is monosodium glutamate produced in the form of

[1] OJ No L 349, 31. 12. 1994, p. 1.
[2] OJ No L 122, 2. 6. 1995, p. 1.
[3] OJ No L 209, 2. 8. 1988, p. 1.
[4] OJ No L 66, 10. 3. 1994, p. 10.
[5] OJ No L 167, 30. 6. 1990, p. 1.
[6] OJ No L 299, 15. 10. 1992, p. 1.
[7] OJ No L 225, 4. 9. 1993, p. 1.
[8] OJ No L 56, 3. 3. 1990, p. 23.
[9] OJ No L 299, 15. 10. 1992, p. 40.
[10] OJ No L 225, 4. 9. 1993, p. 35.
[11] OJ No C 187, 9. 7. 1994, p. 13.

crystals of various sizes and falling within CN code ex 2922 42 10. It is mainly used as a flavour enhancer in soups, broths, fish and meat dishes and ready made foods. The product is the same as that in the Regulation under review.

II. REASONS TO BELIEVE THAT UNDERTAKINGS HAD BEEN VIOLATED

(5) The application giving rise to the abovementioned review, alleged, *inter alia,* that price undertakings had been violated. While this review is still in progress and any conclusions on this issue are therefore necessarily provisional, an examination of the allegation that price undertakings had been violated led to the following results :

The Commission requested information on resale prices for the product concerned from all importers having purchased monosodium glutamate from those exporters which cooperated in the abovementioned review. The period for which such information was requested, i.e. 1 May 1993 to 30 April 1994, corresponded to the investigation period of the review.

Information was received from independent importers relating to resale prices in the Community of approximately 21 % of all the cooperating exporters' sales to the European Community. It covered resales of the product concerned purchased from the aforementioned Indonesian, Korean and Taiwanese exporters.

In spite of the fact that the Commission could only investigate resale prices from those importers who agreed to cooperate, it found clear indications that the price undertakings were being violated by the aforementioned Indonesian, Korean and Taiwanese exporters, as the great majority of resales of the product concerned originating from each of them were made at prices which could not cover the importers' purchase prices (i.e. set at the undertaking level) plus a reasonable amount for selling, general and administrative expenses, profit and, where appropriate, customs duty. The resale prices of this sample of transactions reflected the general situation on the Community market, as described by the applicant.

Even if the export prices, taken at their face value did correspond to the terms of the undertakings, the level of the resale prices of the merchandise in the Community nevertheless constitutes a strong indication that compensation, in whatever form, was granted by the exporters to their customers in the Community. This would constitute a violation of the undertakings.

(6) In addition, two exporters refused to cooperate properly in the abovementioned review.

One of these exporters made some exports of the product concerned to a non-cooperating importer located in Germany. The exporter concerned did not disclose fully its relationship with the German importer, while the Commission had strong reasons to believe that these two companies were related.

The other exporter submitted a response to the questionnaire which was issued in the course of the abovementioned review, but it refused to cooperate in the verification of the information contained therein.

(7) Taking into consideration all the facts set out in recitals 5 and 6, the Commission concluded that, in accordance with Article 10 (6) of the Basic Regulation, there were reasons to believe that the price undertakings accepted by the Commission from the abovementioned exporters had been violated. In these circumstances, the price undertakings concerned should be withdrawn and replaced by a provisional anti-dumping duty based on the facts established before the acceptance of these price undertakings.

III. COMMUNITY INTEREST

(8) The Council, in Regulation (EEC) No 2455/93, concluded that it was in the Community interest that measures be imposed on imports of monosodium glutamate from the four countries concerned.

(9) It has been provisionally found that the conclusions on Community interest as set out in the above Regulation are still valid and should remain unchanged. Moreover, it is in the fundamental interest of the Community to take action in cases where undertakings are violated, as such violation constitutes a circumvention of measures that have been duly adopted and should therefore be remedied.

(10) In the light of the above, it was considered to be in the interest of the Community that the acceptance by the Commission of the price undertakings from the abovementioned companies be withdrawn and replaced by a provisional anti-dumping duty.

IV. EXPORTERS' COMMENTS

(11) In accordance with Article 10 (6) of the Basic Regulation, the exporters concerned were given the opportunity of expressing their views on the Commission's observations and its intention to impose provisional anti-dumping duties. Their comments were taken into account as appropriate.

V. PROVISIONAL DUTIES

(12) In the light of the above, the Commission concludes that, pursuant to Article 10 (6) of the Basic Regulation, provisional duties should be calculated on the basis of the facts established before the undertakings were accepted. The rate of duty corresponding to the injury margin necessary to eliminate injurious dumping was established during the earlier investigation for each exporter as an alternative to the price undertakings accepted by Decision 93/479/EEC. The amounts of these duties were disclosed to the exporters concerned and were not disputed by them.

VI. FINAL PROVISION

(13) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of monosodium glutamate, falling within CN code 2922 42 10, originating in the countries and produced by the companies listed hereafter.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

Country	Products manufactured by	Amount of duty (ECU per kilogram)	Taric additional code
Indonesia	PT Indomiwon Citra Inti	0,163	8842
Republic of Korea	Cheil Foods & Chemicals Inc.	0,132	8843
	Miwon Co. Ltd	0,163	8844
Taiwan	Tung Hai Fermentation Industrial Corp.	0,163	8845
	Ve Wong Corporation	0,163	8845
Thailand	Thai Fermentation Industry Corporation	0,124	8846

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the provisional duty.

Article 2

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

Article 3

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

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

Done at Brussels, 18 July 1995.

For the Commission

Leon BRITTAN

Vice-President