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COUNCIL REGULATION (EC) No 81/96

of 19 January 1996

amending Regulation (EEC) No 2455/93 imposing definitive anti-dumping duties on imports of monosodium glutamate originating in Indonesia, the Republic of Korea and Taiwan and collecting definitively the provisional duties imposed and terminating the proceeding with regard to Thailand

(OJ L 15, 20.1.1996, p. 20)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 2051/98 of 24 September 1998	L 264	1	29.9.1998

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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THE COUNCIL OF THE EUROPEAN UNION,

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], and in particular Article 23 thereof,

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 [2], and in particular Articles 12, 14 and 15 thereof,

Having regard to the proposal from the Commission submitted after consulting the Advisory Committee,

Whereas:

I. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EEC) No 1798/90 [3], imposed definitive anti-dumping duties 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 [4], Decision 92/493/EEC [5] and Decision 93/479/EEC [6].

II. REVIEW INVESTIGATION

(2) By a notice published in the *Official Journal of the European Communities* [7], the Commission, after consulting 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 an application lodged by the Community industry.

The application alleged, in particular, that the normal values established originally had generally increased, while the export prices for monosodium glutamate originating in most of the countries concerned had significantly decreasing during 1993, thus resulting in increased dumping when compared to the original findings. It was also alleged that the monosodium glutamate originating in the countries concerned had been imported in the Community at prices lower than the price levels contained in the existing price undertakings and that, therefore, the price undertakings were not suitable measures in this proceeding. It was finally alleged that the aforementioned facts have resulted in renewed financial losses for the Community industry, thereby aggravating the injury suffered. The evidence of changed circum-

[1] OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
[2] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[3] OJ No L 167, 30. 6. 1990, p. 1. Regulation as last amended by Regulation (EEC) No 2455/93 (OJ No L 225, 4. 9. 1993, p. 1).
[4] OJ No L 56, 3. 3. 1990, p. 23.
[5] OJ No L 299, 15. 10. 1992, p. 40.
[6] OJ No L 225, 4. 9. 1993, p. 35.
[7] OJ No C 187, 9. 7. 1994, p. 13.

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stances contained in the application was considered sufficient to justify the opening of a review investigation.

(3) The Commission officially advised the complainant Community industry, the exporters and the importers known to be concerned and the representatives of the exporting countries, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(4) The Commission sent questionnaires to parties known to be concerned and received replies to its questionnaires from the complainant Community industry, one Indonesian producer and its related selling company, two Korean producers, two Taiwanese producers, one Thai producer and two importers in the Community.

(5) One Korean exporter, one Indonesian exporter, one important consumer of monosodium glutamate and the *Fédération des Associations de l'Industrie des Bouillons et Potages de la CEE* requested, and were granted, a hearing.

(6) The Commission sought and verified all information it deemed necessary for the purposes of a determination and carried out investigations at the premises of the following companies:

(a) complainant Community producer:

Orsan SA (France);

(b) producers/exporters:

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;

(c) importers:

GMS-Chemie-Handelsgesellschaft mbH (Germany).

(7) As Thai Fermentation Industry Corporation submitted a deficient response to the Commission's questionnaire and refused to cooperate in the verification of the information it submitted, in accordance with Article 7 (7) (b) of the Basic Regulation, the findings had to be based on the facts available.

(8) The investigation of dumping covered the period from 1 May 1993 to 30 April 1994 (hereinafter referred to as 'the investigation period').

III. CONTINUATION OF EXISTING MEASURES

(9) As the review investigation was still in progress beyond the normal period of expirty of the measures, the Commission gave notice ([1]), in accordance with Article 15 (3) of the Basic Regulation, that the measures concerning monosodium glutamate originating in Indonesia, the Republic of Korea, Taiwan and Thailand

([1]) OJ No C 164, 30. 6. 1995, p. 7.

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would remain in force after the end of the relevant five-year period, pending the outcome of the review.

IV. PROVISIONAL MEASURES

(10) In the course of the review investigation the Commission found that there were reasons to believe that the undertakings referred to in recital 1 were being violated and consequently, by Regulation (EC) No 1754/95 of 18 July 1995 ([1]), withdrew its acceptance of the undertakings previously accepted from Cheil Foods & Chemicals Inc., Miwon Co. Ltd, Ve Wong Corporation, Tung Hai Fermentation Ind. Corp., PT Indomiwon Citra Inti and Thai Fermentation Industry Corporation, and imposed instead a provisional anti-dumping duty.

(11) By Regulation (EC) No 2678/95 ([2]), the Council extended the validity of these duties for a period of two months.

V. SUBSEQUENT PROCEDURE

(12) Following the imposition of the provisional anti-dumping duties, Cheil Foods & Chemicals Inc., Miwon Co. Ltd, PT Indomiwon Citra Inti and Tung Hai Fermentation Ind. Corp. made their views known in writing. Parties who requested were granted a hearing by the Commission.

(13) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, further investigations were carried out at the premises of the following importers:

— DCT Chemie BV (Netherlands),
— Henry Lamotte GmbH (Germany),
— Quimidroga SA (Spain),
— Scanchem Ltd (United Kingdom),
— Superfos Chemicals A/S (Denmark),
— Tang Frères (France),
— VOS BV (Netherlands).

(14) The parties were informed in writing of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the collection of the amounts secured by way of a provisional duty. The parties were also granted a reasonable period within which to make representations subsequent to the disclosure.

The oral and written comments presented by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

(15) The investigation exceeded the period of one year mentioned in Article 7 (9) (a) of the Basic Regulation due to the unusual complexity of this case. As indicated above, verifications were carried out at the premises of seven importers, the need to obtain and verify additional information only arising at an advanced stage of the investigation.

VI. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product concerned

(16) The product covered by the complaint and for which the review investigation was initiated is monosodium glutamate produced in the form of crystals of various sizes and falling within CN code ex 2922 42 10. It is mainly used as flavour enhancer in soups,

([1]) OJ No L 170, 20. 7. 1995, p. 4.
([2]) OJ No L 275, 18. 11. 1995, p. 22.

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broths, fish and meat dishes and ready made foods. The product is the same as that in the Regulation under review.

(17) Monosodium glutamate is available in various packing sizes, ranging from consumer packs of 0,5 gram to 1 000 kilo bulk bags. Smaller packing sizes are sold via retailers to private consumers, while the larger sizes of 25 kilo and more are destined for industrial users. However, there are no differences in the characteristics of monosodium glutamate packed in the various sizes.

2. **Like product**

(18) It was found that the conclusions of the Regulation under review are still valid and that monosodium glutamate produced and sold by the Community industry on the Community market is a product like that produced in, and exported from, the four countries in question to the Community.

VII. **DUMPING**

1. **Preliminary remark**

(19) With regard to Thai Fermentation Industry Corporation, it should be noted that this company which was the sole producer in Thailand having submitted information, although incomplete, in response to the Commission's questionnaire, refused to cooperate in the verification of this information. In addition, none of the cooperating importers was supplied by this company. In these circumstances, it was not possible to make an individual finding for this company, and findings concerning Thailand had to be based on the facts available as described in recital 33.

2. **Normal value**

(a) *General*

(20) For all the exporting countries concerned, normal values were established for the relevant product types exported to the Community during the investigation period, i.e. on the basis of packing sizes of 25 kilo bags.

(b) *Indonesia*

(21) For the cooperating Indonesian producer normal value had to be constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation, since almost all of its domestic sales were made at a loss during the investigation period.

(22) The constructed normal value was based on the company's own manufacturing costs incurred during the investigation period, in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. To these costs, an amount corresponding to the company's own selling, general and administrative expenses was added. In the absence of any information on profits by other Indonesian producers of the like product or in similar business sectors, it was considered that the average profit realised during the investigation period by all other cooperating exporters on their domestic sales of the like product made in the ordinary course of trade would form the most reasonable basis on which to determine profit, since the structure of the markets concerned were to a large extent similar to that in Indonesia.

(c) *Republic of Korea*

(23) For the two Korean producers which replied to the Commission's questionnaire, normal value was established, in accordance with Article 2 (3) (a) of the Basic Regulation, on the basis of the price actually paid in the ordinary course of trade for domestic sales of the like product, which were made in sufficient quantities to permit a proper comparison.

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(d) *Taiwan*

(24) For the two Taiwanese producers which replied to the Commission's questionnaire, normal value was established, in accordance with Article 2 (3) (a) of the Basic Regulation, on the basis of the price actually paid in the ordinary course of trade for domestic sales of the like product, which were made in sufficient quantities to permit a proper comparison.

3. **Export price**

(25) Export prices reported by all cooperating producers in Indonesia, Korea and Taiwan in their replies to the Commission's questionnaire corresponded to the price levels of the price undertakings. However, a verification of these export prices confirmed the allegation in the review application that the price undertakings had been violated and that the export prices reported were unreliable.

(26) The above conclusion was reached after consideration of the following facts: the Commission requested information on resale prices for the product concerned as well as information on the costs between importation and resale from all importers having purchased monosodium glutamate from those exporters which cooperated in this review.

A number of importers supplied the requested information on resale prices and costs and this information was verified at the premises of those importers which agreed to cooperate further in the investigation. It was found that these latter importers, which had sourced the product concerned from the cooperating exporters in Korea, Indonesia and Taiwan, had all sold the product concerned on the Community market at a loss during the period investigated and, in some cases, the resale price did not even cover the purchase price. This was a regular pattern of pricing behaviour, spanning the entire investigation period, for which no convincing reason could be advanced other than the existence of compensatory arrangements. In addition, clear evidence was found during the verification visits to certain importers that the undertakings accepted from Miwon Co. Ltd (Korea) and PT Indomiwon Citra Inti (Indonesia) had been violated, i. e. that the import prices were not at the level of the price undertakings as demonstrated. In the case of the Indonesian company, the violation was evidenced by the issue of credit notes relating to sales of the product concerned and, in the case of the Korean company, on the existence of correspondence referring to prices substantially below the undertaking price. The above facts alone show that the actual export prices for the transactions concerned were significantly lower than those reported at the undertaking price level.

In the above circumstances, which strongly support the existence of compensatory arrangements and the unreliability of export prices reported, it was concluded that the export prices reported by the cooperating exporters should be reconstructed in accordance with Article 2 (8) (b) of the Basic Regulation i. e. on the basis of the prices at which the imported product was first sold to independent customers, allowance being made for all costs incurred between importation and resale and for a reasonable profit margin for the importers concerned.

(27) Accordingly, for the cooperating exporters in Korea, Taiwan and Indonesia, the export price was constructed by deducting from the weighted average resale prices of each of the cooperating importers to the first independent customer, an amount which corresponded to the importers' costs between importation and resale plus an amount for profit of 5 %. This amount of profit was considered reasonable as it was in line with that considered appropriate for the product concerned in previous investigations and was not contested. An additional deduction was made for customs duty and other costs, such as ocean freight and insurance, to arrive at an ex-works level in the countries of origin.

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(28) For those transactions by the cooperating producers for which information on resales by importers could not be obtained, it was concluded that, in the light of the facts revealed by the verification of resale prices of monosodium glutamate exported by those producers carried out at the seven importers referred to in recital 13, the export prices submitted by exporters had to be disregarded for the above same reasons. The export price therefore had to be established, in accordance with Article 7 (7) (b) of the Basic Regulation, on the basis of the facts available, i. e. it was considered that actual export prices in these cases were at the same level as the export prices reconstructed as described in recitals 25 to 27.

4. **Comparison**

(29) The weighted average normal value of 25 kilo bags, for each cooperating exporter, was compared with the export price established as described in recitals 25 to 28 at the same level of trade and on an ex-works basis. For the purpose of a fair comparison, due allowance was made for the differences in selling expenses claimed to affect price comparability for which satisfactory evidence was submitted. Adjustments were made, in particular, in respect of transport, insurance, handling, loading and ancillary costs, packing costs, credit and salesmen's salaries.

5. **Dumping margins**

(30) The comparison showed the existence of dumping margins, being equal to the amount by which the normal value, as established, exceeded the price for export to the Community.

(31) The weighted average dumping margin for each producer, expressed as a percentage of the free-at-Community-frontier price, is as follows:

Indonesia

— PT Indomiwon Citra Inti: 64,7 %;

Republic of Korea

— Cheil Foods & Chemicals Inc.: 13,3 %,
— Miwon Co. Ltd: 32,7 %;

Taiwan

— Tung Hai Fermentation Ind. Corp.: 44,2 %,
— Ve Wong Corporation: 52,4 %.

(32) For those producers in Indonesia, Korea and Taiwan which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation. In this respect, it was considered, in the light of the proportion of the total imports into the Community covered by the cooperating producers in each of the three countries concerned, that the findings made with regard to these companies provided the most appropriate basis for the determination of the dumping margin.

On this basis it was concluded that it would provide a bonus for non-cooperation, and might lead to circumvention of anti-dumping measures, should any of the producers concerned be deemed to have dumped at levels lower than the highest dumping margin found for any producer in the exporting country concerned which had cooperated.

It was, therefore, considered appropriate to use, for the non-cooperating producers concerned, the highest dumping margin found

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for a cooperating producer in the respective country, i. e. 64,7 % for Indonesia, 32,7 % for Korea and 52,4 % for Taiwan.

(33) As far as Thailand is concerned, and for the reasons described in recital 19, it was considered appropriate, given the absence of any cooperating producer in this country, to base the country-wide dumping margin on the highest margin found for any cooperating producer in one of the other countries, i. e. 64,7 %.

VIII. **INJURY**

Preliminary remark

(34) In accordance with Article 14 of the Basic Regulation, the investigation sought to determine the extent of any changes in the circumstances established in the Regulation under review with regard to the behaviour of the exporters on the Community market or the situation of the Community industry. Since the original five-year period of validity of the measures being reviewed would normally have lapsed, the question of the likelihood of inury recurring in the absence of measures was also examined.

The examination of the inury trends covered the period from 1991 to 1993 and the investigation period.

A. COMMUNITY INDUSTRY

(35) The complainant Community producer is the sole producer of the like product in the Community and, consequently, represents total Community production of the product concerned. Therefore, it constitutes the Community industry in the meaning of Article 4 (5) of the Basic Regulation.

B. SITUATION OF THE COMMUNITY INDUSTRY

(36) As there is only one Community producer of the product concerned and due to the confidential nature of the information relating to injury indicators, the figures describing the development of production, capacity, capacity utilization, Community consumption, sales volume, market shares, price evolution and profitability are given in the form of indices, starting from a base of 100 for 1991 figures.

Production, capacity and capacity utilization

(37) Production by the Community industry of the product concerned decreased in 1992 to 97,58, but recovered slightly in 1993 to 98,58. During the investigation period, Community production achieved 101,08.

The Community industry's production capacity for the product concerned remained by and large stable. The capacity decreased in 1992 to 99,8 and thereafter increased in 1993 to 101,76 and during the investigation period to 103,72. Between 1991 and the investigation period, the capacity utilization rate varied between 100 and 96,88.

Community consumption

(38) Community consumption was stable during the period examined. It was, on an indexed basis, 100 in 1991 and decreased to 96,83 in 1992. In 1993, it increased to 101,08 and decreased subsequently to 100,25 during the investigation period.

Sales volume and market shares

(39) The Community industry's sales volume in tonnes dropped from 100 in 1991 to 93,21 in 1992. In 1993, the quantity sold was 107,36 and during the investigation period it decreased slightly to 106,12.

The market share of the complainant Community producer dropped, also on an indexed basis, from 100 in 1991, to 92,43 in 1992, increased to 102,73 in 1993 and fell again slightly to

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102,28 during the investigation period. It should be noted, however, that its market share was at all times very substantial.

Price evolution

(40) Although the Commission industry's sales prices increased slightly to 101,66 in 1992, they fell substantially in the following year to 95,13. The situation improved somewhat during the investigation period, as the prices recovered to 95,91.

Profitability

(41) At the outset, it should be noted that, despite the anti-dumping measures in force, the profitability of sales by the Community industry of the product concerned was at no time during the period examined at a satisfactory level, although the Community industry had achieved a reduction in costs of production. Indeed, the Community industry's actual level of profitability was not only far below the level considered by the Regulation under review as appropriate, as evidenced by the request for a review of the undertakings submitted by Community industry in 1992, but remained so low over an extended period of time that the industry's viability was jeopardized. The already low level prevailing in 1991 underwent a further sharp decrease in 1992. The downward trend continued in 1993, when the Community industry came very close to a loss-making situation. The investigation period saw some improvement of profitability which did not, however, reach the level of 1991. When considering profitability, it should also be borne in mind that, as mentioned above, its decline would have been even more significant had the Community producer not achieved a reduction in costs of production.

Conclusion

(42) The examination of the abovementioned indicators shows that, notwithstanding certain positive effects of the anti-dumping measures currently in force, the financial situation of the Community industry remains precarious. While material injury was established by the Regulation subject to review for the period from January 1989 to September 1992, the examination of the facts established in the current review demonstrates that material injury has persisted in the subsequent period. This is shown in particular by the further decrease in prices and the persistent extremely low level of profitability.

C. BEHAVIOUR OF THE EXPORTERS CONCERNED

Volume of imports

(43) The volume of imports from the four countries concerned increased from 11 228 tonnes in 1991 to 12 871 tonnes in 1992, but decreased thereafter to 7 921 tonnes in 1993 and 7 478 tonnes in the investigation period. With the exception of Thailand, the imports of the product concerned broken down by the four countries involved, follow, by and large, a similar pattern to the development of total imports of monosodium glutamate from Indonesia, Korea, Taiwan and Thailand. They represented the following market shares:

(in %)

	1991	1992	1993	Investigation period
Indonesia	2,99	3,55	3,21	2,34
Korea	9,94	12,34	6,78	7,39
Taiwan	7,56	8,55	4,61	4,24
Thailand	0,70	0,64	0,18	0,10

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This represents a development of the total market share of the imports concerned from 21,18 % in 1991 to 25,07 % in 1992 with a subsequent decrease to 14,78 % in 1993 and 14,07 % in the investigation period.

Prices of the dumped imports

(44) It was investigated whether the exporting producers had undercut the prices of the Community industry during the investigation period. A comparison was therefore made on the basis of the constructed weighted average export price (cif Community frontier, duty paid) as established in recitals 25 to 28 and the Community industry's weighted average ex-works selling price for monosodium glutamate sold in the Community.

The level of undercutting of the Community industry's prices was found to range between 20 % and 22 % for imports originating in Taiwan, between 9 % and 11 % for imports originating in the Republic of Korea and 26 % for imports originating in Indonesia. With regard to the Thai exporter, it was not considered possible to calculate undercutting given the fact that, as set out in recital 19, they did not cooperate in the investigation. In view of the conclusion reached on the existence of compensatory arrangements, entered into by the cooperating exporters (see recital 26), Eurostat figures concerning imports from Thailand could not be considered as a reliable source.

Conclusion

(45) Although the market penetration of imports from the countries concerned has decreased considerably, their market share has remained substantial, and a clear pattern of price undercutting has emerged.

D. CAUSE OF INJURY

1. **Cumulation**

(46) As far as imports from Thailand are concerned, it was concluded that these imports, whose market share decreased to 0,1 % in the investigation period, should not be analysed cumulatively with imports of the other countries concerned with a view to determining their effect on the situation of the Community industry as such a low import volume could not have any serious impact on the latter.

As in the original investigation and the reviews carried out prior to this review, it was found that the effects of the imports from Korea, Taiwan, and Indonesia have to be analysed cumulatively, since the imports of the product under consideration originating in each of these countries are alike in all respects, interchangeable and followed the same pricing behaviour. These imports competed with the like product manufactured by the Community industry and with each other.

2. **Effect of the dumped imports from the countries concerned**

(47) In determining whether any changes had occurred in the causal link established by the Regulation and the Commission decision subject to review between the dumped imports and the material injury, the further developments since these earlier findings were examined. While some of the Community industry's indicators improved, its performance remained poor in particular regarding its price level, which fell after the imposition of the measures, and its continuing low profitability. The latter can clearly be linked to the pricing behaviour of the exporters as established in recitals 25 to 28 which through price undercutting in a price sensitive market managed to maintain their pressure on the prices of the Community industry.

(48) Taking this into consideration as well as the fact, as was outlined above, that the volume of imports from the three countries concerned remained at a substantial level, there cannot be any

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reasonable doubt that these imports have been a decisive factor on the Community industry's continuing poor financial situation.

In conclusion, although certain improvements occurred in the Community industry, it is still experiencing overall material injury as a result of the behaviour of the Indonesian, Korean and Taiwanese exporters which, through price undercutting, could not fail to affect severely an industry in the process of recovering from dumping.

3. **Effect of other factors**

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

Imports from Brazil

(50) It was alleged that the Community producer imported substantial quantities of the product concerned from Brazil at prices with which exporters from the four countries in question were prevented from competing. It was found that the Community producer imported monosodium glutamate from Brazil during the investigation period in order to meet a sudden surge in demand and to counteract the effects of industrial action. The Community producer's imports only however represented a small proportion of its output. Consequently, the purpose of these imports by the Community producer was to defend its competitive position in the Community and to maintain its market share. Moreover, contrary to the above allegation, these products were imported and resold at a prive level which was comparable with the Community producer's own production costs and selling prices respectively.

(51) Some interested parties claimed that imports of monosodium glutemate from Brazil were the reason for the difficult situation of the Community industry.

It was found that, while imports originating in Brazil increased substantially over the period examined (from 1 076 tonnes in 1991 to 4 376 tonnes during the investigation period), the price levels of these imports, on the basis of information from Eurostat, increased slightly. Even were it to be concluded that imports from Brazil had contributed to the injury 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.

Imports from the United States of America

(52) One party claimed that imports of monosodium glutamate from the United States of America might be responsible for the difficult situation of the Community industry.

It was found, however, that imports from the United States during the period examined remained at negligible levels (23 tonnes in 1991 and 27 tonnes in 1993 and, in terms of market shares, 0,04 % in 1991 and 0,05 % in 1993) and were sold at prices well above those of the dumped imports. It was, in addition, claimed by the complainant that imports originating in the United States surged in July and August 1994. This development, however, took place after the investigation period and, therefore, could not be taken into consideration, in conformity with the Community institutions consistent practice, for the purpose of the present injury determination. Indeed, the final determination of the facts in an investigation always refers to the investigation period. Developments, which occurred after the end of this period, cannot be taken into consideration since any other method would render the investigation virtually permanent, so that operators concerned could manipulate the results by short-lived changes of the pricing policy. Finally, neither the Basic Regulation nor the Agreement on Implementation of Article VI of GATT 1994 warrant another method.

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Therefore, imports from the United States could not have had any significant negative impact on the situation of the Community industry during the period considered which ended in April 1994.

Other imports

(53) The effects of imports other than those from Brazil, the United States and the four countries concerned on the Community industry were also examined on the basis of the figures reported by Eurostat. These imports, made mainly from Switzerland, Austria, China, Japan and Hong Kong, were, with the exception of Hong Kong, usually at significantly higher prices than those from the four countries concerned. The quantities imported from Hong Kong were, in any event, very low. In this context, it is interesting to note that neither Switzerland, Austria nor Hong Kong had any production facilities for monosodium glutamate.

In these circumstances, it can be ruled out that these other imports have had any significant adverse impact on the situation of the Community industry.

Mismanagement of the Community industry

(54) One importer and the *Fédération des Associations de l'Industrie des Bouillons et Potages de la CEE* alleged that the Community industry used outdated technology in order to produce the product concerned. It was also alleged that the injury sustained by the Community industry was due, at least in part, to the Community industry's own deficient management and know-how.

However, these allegations were not substantiated and, therefore, had to be rejected. They were also contradicted by the Commission's own findings on the productivity and efficiency of the Community industry, as shown by its successful rationalization efforts.

4. **Conclusion**

(55) In these circumstances, it was concluded that, even were it accepted that the factors mentioned above had an adverse effect on the situation of the Community industry, the dumped imports from Indonesia, Korea, and Taiwan had, taken in isolation, continued to cause material injury to the Community industry.

E. RECURRENCE OF INJURY

(56) In the light of the above analysis and in order to assess the effect of expiry of the measures in force, the following was considered:

(57)
- — as far as Thailand is concerned, as stated in recital 46, the impact of exports from this country is negligible and there is no indication of a possible resurgence of dumped imports. The measures should therefore be repealed,
- — monosodium glutamate is a commodity and price is the key factor in customer choice, all customers being industrial users. Sales at low prices have therefore inevitable substitution effects as certain customers choose to be supplied at the lowest price offered,
- — undercutting margins of up to 26 % have been established. These injurious prices would most likely persist in the future and would continue to prevent the Community industry recovering from injury, the situation of which would be further aggravated should the anti-dumping measures currently in force not be continued.
- — further evidence of the need for the Community industry to continue to be protected against injurious dumping is the behaviour of the exporters which led to the withdrawal of the undertakings by the Commission. Export prices reported by the exporters had to be considered as unreliable because of low resale prices on the Community market which can only be explained by the existence of compensatory arrangements. The likelihood of injurious dumping recurring is also confirmed by information received by the Commission

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concerning exports of monosodium glutamate originating in the four countries concerned which were made to the three new Member States before their Accession. These exports were found to have been made at prices substantially lower than the price level in the Community, demonstrating the propensity for dumping by the countries concerned.

(58) Under these circumstances it is concluded that the injury already suffered by the Community industry and caused by dumped imports from Korea, Taiwan and Indonesia could only worsen if measures were allowed to lapse.

IX. COMMUNITY INTEREST

(59) In Regulation (EEC) No 2455/93, the Council concluded that it was in the Community interest that measures be imposed on imports of monosodium glutamate from the four countries concerned. It was found that the conclusion on Community interest as set out in the Regulation subject to review should remain unchanged since in the subsequent period the development of the facts underlying this conclusion have only strengthened the case for maintaining the measures.

(60) It should be noted that monosodium glutamate production is subject to strict environmental standards, continuing compliance with which may require substantial investment. The ability of the Community industry to underake any necessary investment would be endangered if its poor financial situation resulting from injurious dumping were not remedied and effective competition not restored through the maintenance of anti-dumping measures, amended to reflect the latest findings.

(61) One interested party argued that to maintain the anti-dumping measures at their current level would allow the Community industry to reinforce its strong position on the Community market to the detriment of users of monosodium glutamate. 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 presence of imports from seven other countries during the investigation period, equal in volume to those from the countries concerned. As far as the impact of anti-dumping measures on the situation of the Community users of monosodium was concerned, it was acknowledged that any increase of the price of inputs was of importance to them. However, although the industry using monosodium glutamate refused to indicate the percentage of its total costs attributable to monosodium glutamate, it did not deny that, as revealed by the investigation, the price of monosodium glutamate has only a minor effect on the costs of the products in which it was used.

(62) 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 necessary opportunity to continue to redress its precarious financial situation.

X. AMENDMENT OF THE MEASURES IN FORCE

1. Cooperating exporters

(63) The cooperating exporters, on being informed of the findings of the investigation, offered new minimum price undertakings in respect of exports to the Community of the product concerned. However, for the reasons described in recitals 25 to 28 above, it was considered that undertakings were not an appropriate measure for removing the injury being suffered by the Community industry. Indeed, the undertakings previously accepted had to be withdrawn owing to violation and no appropriate guarantees were given by the exporters regarding price levels or compliance that could justify the acceptance of such

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undertakings. Accordingly, the undertakings offered were, after consultation, not accepted by the Commission.

(64) For the purpose of establishing the level of the duty to be imposed, account was taken of the dumping margins found and of the amount of duty necessary to eliminate the remaining injury sustained by the Community industry.

Since the remaining injury consisted mainly of price depression and continuing abnormal low profitability, the removal of such injury required that the industry be put in a position in which its prices could be increased to a profitable level. In order to achieve this, export prices should be increased accordingly. For calculating the necessary price increase, it was considered that prices of the dumped imports had to be compared with the cost of production of the Community industry plus a margin of profit sufficient to ensure the viability of that industry.

On this basis, the weighted average export prices were compared, for the investigation period, on a free-at-Community-frontier level increased by customs duties, where appropriate, with the cost of production of the Community producer concerned, plus a margin of profit. This profit level used, which cannot be stated for reasons of confidentiality and which did not reach the level of profits made by that producer prior to the impact of the imports concerned, is considered to be obtainable in the absence of dumped imports and is in line with that considered reasonable by the Commission in the original investigation.

These comparisons showed injury margins which, expressed on a weighted average basis as a percentage of the free-at-Community-frontier price, ranged from 25,4 % to 35,7 %.

(65) For one exporter, the margin of dumping found was below the corresponding increase in export prices necessary to remove the injury as calculated above. The duty to be imposed for this company should, therefore, correspond to the dumping margin established. For the other cooperating exporters, as the margins of dumping found were above the corresponding increases in export prices necessary to remove the injury, as calculated above, the duties to be imposed for these companies should, therefore, correspond to the injury margins established.

(66) Given the potential for absorption of the effect of an *ad valorem* anti-dumping duty and given the violation of the undertakings, as established, a duty should be imposed in the form of a specific duty, i.e. fixed amount of ecus per kilo.

2. **Other producers in the exporting countries concerned**

(67) The cooperating exporters accounted for a very high proportion of total exports of the product concerned to the Community. In establishing the level of duty for producers in the countries concerned which neither replied to the Commission's questionnaire nor otherwise made themselves known, it was, therefore, considered appropriate to establish the level of duty applicable to such producers at the highest amount of duty found for an exporter in each country.

3. **Conclusion**

(68) The Regulation subject to review should therefore be amended in accordance with the above findings.

XI. COLLECTION OF THE PROVISIONAL DUTY

(69) In view of the dumping margins established, the violation of the undertakigns and of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty be definitively collected, with the exception of those collected for imports from Thailand for the reasons set out in recital 57,

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HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EEC) No 2455/93 shall be replaced by the following:

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'Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of monosodium glutamate, falling within CN code ex 2922 42 00 (TARIC code 2922 42 00*10), originating in the Republic of Korea and Taiwan.

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

Country	Product manufactured by	Duty	TARIC code
Taiwan	All companies	20,4 %	—
Korea	— Cheil Jedang Corporation	10,5 %	8843
	— All other companies	12,3 %	8900'

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Article 2

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1754/95 shall be definitively collected in full. The amount secured by way of provisional duty on imports from Thailand shall be released.

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.