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(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2051/98
of 24 September 1998**

imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in Brazil and Vietnam, amending Regulation (EC) No 81/96 in respect of anti-dumping measures concerning imports of monosodium glutamate originating in the Republic of Korea and Taiwan and terminating the proceeding in respect of imports of monosodium glutamate originating in the United States of America and Indonesia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, and in particular Articles 9(2), 9(4) and 11(3) thereof,

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

Whereas:

and Taiwan. As a result of this review the Commission, by Regulation (EC) No 1754/95⁽⁶⁾, withdrew its acceptance of the existing undertakings, with the exception of imports from two Indonesian companies, and imposed provisional anti-dumping duties on all other imports originating, *inter alia*, in Indonesia, Korea and Taiwan. The Council, by Regulation (EC) No 81/96⁽⁷⁾ subsequently imposed definitive anti-dumping duties on all MSG imports from the countries concerned without any exception.

A. PROCEDURE

1. General

- (1) By Regulation (EEC) No 1798/90⁽²⁾, the Council imposed definitive anti-dumping duties on imports of monosodium glutamate (hereinafter referred to as MSG) originating, *inter alia*, in Indonesia, the Republic of Korea (hereinafter Korea) and Taiwan, with the exception of imports from certain exporting producers in these countries from which the Commission accepted undertakings by Regulation (EEC) No 547/90⁽³⁾, Decision 92/493/EEC⁽⁴⁾ and Decision 93/479/EEC⁽⁵⁾.
- (2) Subsequently in July 1994, following a request lodged by the Community industry, the Commission initiated an interim review of the anti-dumping measures in force with regard to imports of MSG originating, *inter alia*, in Indonesia, Korea

2. Present investigations

- (3) In July 1997, the Commission, after consulting the Advisory Committee and in accordance with Article 11(3) of Council Regulation (EC) No 384/96, (hereinafter referred to as the Basic Regulation), initiated, on its own initiative, an interim review of the anti-dumping measures in force with regard to imports of MSG originating in Indonesia, Korea and Taiwan (hereinafter review investigation). This was based on the significant changes in the pattern of the volumes and prices of the imports concerned which appeared to have occurred since the amendment of the anti-dumping measures in 1996⁽⁶⁾.
- (4) In July 1997, following a complaint pursuant to Article 5 of the Basic Regulation lodged by Orsan SA, the sole MSG producer in the Community, the Commission initiated an anti-dumping proceeding in respect of imports of this product originating in Brazil, the USA and Vietnam (hereinafter new investigation). The complaint contained evidence of dumping with regard to MSG imports from

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).

⁽²⁾ OJ L 167, 30. 6. 1990, p. 1. Regulation as amended by Regulation (EEC) No 2966/92 (OJ L 299, 15. 10. 1992, p. 1) and by Regulation (EEC) No 2455/93 (OJ L 225, 4. 9. 1993, p. 1).

⁽³⁾ OJ L 56, 3. 3. 1990, p. 23.

⁽⁴⁾ OJ L 299, 15. 10. 1992, p. 40.

⁽⁵⁾ OJ L 225, 4. 9. 1993, p. 35.

⁽⁶⁾ OJ L 170, 20. 7. 1995, p. 4.

⁽⁷⁾ OJ L 15, 20. 1. 1996, p. 20.

⁽⁸⁾ OJ C 201, 1. 7. 1997, p. 4.

these three countries and injury resulting therefrom which was considered sufficient to initiate an anti-dumping proceeding⁽¹⁾.

- (5) This Regulation concerns the findings made with regard to both the review investigation and the new investigation, as these two investigations were initiated almost simultaneously and used the same periods for the examination and determination of dumping, injury and Community interest. Owing to the complexity of the data gathered and examined as well as of certain issues raised by interested parties in the course of both investigations, the review investigation exceeded the normal period of 12 months provided for in Article 11(5) of the Basic Regulation.
- (6) The Commission officially advised the complainant Community industry, the exporting producers and the importers known to be concerned as well as 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.
- (7) The Commission sent questionnaires to the parties known to be concerned and received replies from the Community producer, from five Indonesian exporting producers and two Indonesian selling companies related to three of the Indonesian exporting producers, from one Korean exporting producer, from two related Brazilian exporting producers and their two related companies in the Community and from one Vietnamese exporting producer.

No reply to the questionnaire was obtained from ADM, the sole exporting producer in the USA known to exist. The company informed the Commission that they would definitively discontinue production of MSG by the end of 1997, and hence also exports of this product to the Community.
- (8) The Commission also sent questionnaires to a large number of economic operators understood to be or to represent purchasers, users and importers of MSG in the Community. Only a small number of these operators replied. The Commission also addressed questions to certain important suppliers of raw materials to the Community industry. Although they replied, their answers were not complete.
- (9) The Commission sought and verified all information deemed necessary for the purposes of a determination of dumping, injury and Community interest. With the exception of two related Brazilian exporting producers, for which determinations were made without carrying out verifica-

tion visits, on-the-spot investigations were carried out at the premises of the following companies:

(a) *Indonesia*

exporting producers:

- P. T. Indomiwon Citra Inti, Jakarta
- P. T. Sasa Inti, Surabaya
- P. T. Cheil Samsung, Jakarta
- P. T. Ajinomoto Indonesia, Jakarta
- P. T. Ajinex International, Jakarta

related domestic selling companies:

- P. T. Ajinomoto Sales, Jakarta (related to P. T. Ajinomoto and P. T. Ajinex)
- P. T. Rodamas Co. Ltd., Jakarta (related to P. T. Sasa Inti)

(b) *Republic of Korea*

exporting producers:

- Cheil Jedang Corporation, Seoul

(c) *Brazil*

exporting producers:

- Ajinomoto Interamericana Industria e Comercio Ltda, São Paulo*
- Ajinomoto Biolatina Industria e Comercio Ltda, São Paulo*

related importer:

- Ajinomoto Europe Sales GmbH, Hamburg, Germany*

related trader:

- Forum Products Ltd, London, United Kingdom*

(d) *United States of America*

producer:

- Ajinomoto USA Inc., New York, USA*

(e) *Community producer*

- Orsan SA, Nesle, France

(f) *Importers and traders*

- Helm AG, Hamburg, Germany,
- Burtell Foods Ltd, Evesham, United Kingdom

(g) *Users*

- IFF (Nederlands) NV, Tilburg, Netherlands

- (10) It should be noted that all companies marked with an asterisk (*) are members of the Ajinomoto group of companies, ultimately owned and controlled by

⁽¹⁾ OJ C 205, 5. 7. 1997, p. 2.

Ajinomoto Co. Inc. of Tokyo, Japan. All the companies were jointly represented in the investigations and made joint submissions. The group is referred to in this document as 'Ajinomoto'.

3. Investigation period

- (11) For both investigations, the investigation of dumping covered the period from 1 July 1996 to 30 June 1997 (hereinafter referred to as the investigation period). The examination of injury covered the period from 1994 up to the end of the investigation period.

4. Withdrawal of the complaint in respect of Brazil and the USA and subsequent procedure

- (12) On 24 October 1997 the complainant Orsan informed the Commission of its decision to withdraw the complaint in respect of Brazil and the USA, on the grounds that the sole American exporting producer had decided to discontinue production of MSG, as a consequence Brazilian producers would be likely to redirect exports from the Community to the USA. The Commission informed interested parties of the partial withdrawal of the complaint. Interested parties were invited to make observations.
- (13) In response, three exporting producers and one importer argued that if the proceeding was terminated in respect of Brazil and the USA, the same logic should apply also to Vietnam and to the three countries concerned by the review investigation.
- (14) Based on the reactions of the interested parties, the Commission assessed whether a partial termination of the proceeding in respect of the two countries and the maintenance or imposition of measures in respect of the others would be discriminatory pursuant to Article 9(5) of the Basic Regulation.
- (15) The investigation showed that imports from five out of the six countries were at dumped prices or were likely to resume at dumped prices in the absence of the existing measures. While the fact that the American exporting producer closed its production gave reason to distinguish the circumstances of that country from those of the others, no such reason was established in the case of Brazil. The allegation that Brazilian exporting producers would probably divert their sales in the Community to the USA did not withstand serious scrutiny.
- (16) In these circumstances it was concluded that to take measures against the other countries in the absence of measures against Brazil would have been discriminatory. At the end of February 1998 the Commission disclosed this conclusion to the interested parties.
- (17) By letter of 4 March 1998, Orsan cancelled the withdrawal of its complaint in respect of Brazil and the USA because the disclosure of the results of the Commission's investigation had shown that the assumptions on which its withdrawal was originally based were unfounded, and requested the Commission to continue its investigation with respect to all six countries. The Commission considered that Orsan's cancellation of the withdrawal was admissible as it came within the time limits for comments on disclosure.
- (18) In view of the time which had elapsed before Orsan cancelled the withdrawal of its complaint, the Commission could not impose provisional measures.
- (19) 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 termination of the proceedings concerning the USA (see recital 96) and Indonesia (see recital 75). The parties were also granted a reasonable period within which to make representations subsequent to this 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.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product concerned

- (20) The product under consideration in both investigations is monosodium glutamate or MSG produced in the form of crystals of various sizes and falling within the CN code ex 2922 42 00. It is mainly used as a flavour enhancer in soups, broths, fish and meat dishes and ready-made foods.

MSG is available in various packing sizes, ranging from consumer packs of 0,5 g to 1 000 kg bulk bags. Smaller packing sizes are sold via retailers to private consumers, while the larger sizes of 25 kg and more are destined for industrial users. There are no differences in the physical characteristics of MSG packed in these various sizes.

2. Like product

- (21) It was found that MSG produced and sold by the Community industry on the Community market is alike within the meaning of Article 1(4) of the Basic Regulation to that exported from all countries subject to the two investigations as both these products are virtually identical in terms of physical characteristics. Furthermore, MSG produced and sold in Brazil, Indonesia, Korea, Taiwan and the USA was also found to be alike to MSG exported from these countries to the Community. The same is true with regard to the product produced and sold in Thailand, which served as the analogue country in determining normal value for Vietnam.

exports to the Community in the investigation period.

- (26) With regard to Brazil the two cooperating exporting producers found to belong to Ajinomoto represented almost the totality of Brazilian exports of MSG to the Community.
- (27) Of the two American producers known to the Commission only one (ADM) had exports to the Community during the investigation period which are estimated to cover the totality of the exports from the USA as recorded by Eurostat. This exporting producer did not reply to the Commission's questionnaire but, as already mentioned in recital 7, stated that it would definitively discontinue the production of MSG.

C. DUMPING**1. Preliminary remarks**

- (22) For all exporting countries concerned, the analysis of dumping was carried out for the relevant product types exported to the Community during the investigation period, i.e. on the basis of packing sizes of 25 kg bags and above.
- (23) Of the five Indonesian exporting producers who replied to the questionnaire four declared that they had made no exports to the Community during the investigation period. Sasi Inti, the only cooperating exporting producer with export sales to the Community, had one export transaction of only 20 tonnes. This transaction, also represented virtually the totality of the Indonesian exports of MSG to the Community during the investigation period according to Eurostat data. Given the low volume of these imports and hence the lack of representativeness of the corresponding export price it has not been considered appropriate to calculate the dumping margin for Indonesia on this basis.
- (24) In Korea of the two exporting producers which were sent a questionnaire, only one cooperated, Cheil Jedang Corporation. This company was found to have exported MSG to the Community in the investigation period. The exports reported by this company appeared to cover nearly half of the total imports from Korea when this company's export figures are compared with Eurostat data relating to all imports from Korea.
- (25) No cooperation has been obtained from Taiwanese companies, though according to Eurostat, among the countries concerned by the review investigation, Taiwan had made the largest quantities of

2. Normal value

- (29) For the reasons given in recital 23, no normal value determination was made for the sole Indonesian exporting producer to the Community, Sasa Inti.
- (30) With regard to Korea, normal value was established on the basis of prices paid by independent customers in the exporting country with regard to representative and profitable domestic sales, in accordance with Article 2(1) and (2) of the Basic Regulation.
- (31) Given the complete lack of cooperation of Taiwanese companies, normal value had to be established in accordance with Article 18 of the Basic Regulation. For this purpose, it was considered appropriate to use the normal value established in Korea for the sole cooperating exporting producer in this country.
- (32) For the two cooperating Brazilian exporting producers, normal value was established, in accordance with Article 2(1) 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 by independent customers. As all domestic sales of one of the two related exporting producers were made to the other, only the domestic sales of this latter were found to be made to independent customers and therefore considered for establishing normal value. The domestic sales of this exporting producer were found to be made in sufficient

quantities to be considered representative in accordance with Article 2(2) of the Basic Regulation. As more than 80 % of its domestic sales were profitable, all its domestic sales were used in the calculation of the normal value.

(33) As far as the USA is concerned, since the only American exporting producer (ADM) did not reply to the Commission's questionnaire, normal value had to be based on facts available according to Article 18 of the Basic Regulation. In this context, it was considered that the verified information on domestic sales prices which were provided by the other American producer known to the Commission (Ajinomoto USA, Inc.) constituted an appropriate basis for establishing normal value. This information was found to be in line with the normal value alleged in the complaint.

(34) As Vietnam is considered to be a non-market economy country, normal value had to be established by reference to a market economy non-member country, pursuant to Article 2(7) of the Basic Regulation. For this purpose Thailand was envisaged in the notice of initiation as an appropriate market economy country. One Vietnamese exporting producer argued that Thailand had a highly protected market where only one producer operated which had insufficient domestic sales to be considered representative. The Vietnamese exporting producer, therefore, proposed Taiwan as an alternative market economy country. As mentioned above, none of the Taiwanese exporting producers agreed to cooperate. Furthermore, it was found that five companies produced and sold MSG in Thailand where the level of customs duties is comparable to that in other competing countries in the region and therefore, a sufficient degree of competition appears to exist in Thailand. Moreover, domestic sales in Thailand are made in representative quantities, since they are considerably higher than the Vietnamese export volume of MSG to the Community. Finally, the raw material used for the production of MSG, i.e. tapioca, is easily available in Thailand and the production technology is similar to that used in Vietnam. One Thai producer replied fully to the questionnaire and accepted a verification visit. In the light of the above, Thailand was selected as an appropriate market economy country for the purpose of establishing normal value for Vietnam. Normal value was therefore established on the basis of the prices paid or payable, by independent customers in Thailand for sales of the like product which were found to have been made in the ordinary course of trade

and in sufficient quantities to permit a proper comparison.

3. Export price

(35) No export price has been established for Indonesia given the lack of representativity of its exports during the investigation period.

(36) For Korea, the export price was established by reference to the prices actually paid by independent buyers in the Community in accordance with Article 2(8) of the Basic Regulation.

(37) For Taiwan, given the lack of cooperation, the export price had to be based on facts available in accordance with Article 18 of the Basic Regulation. Eurostat figures which showed average export prices for Taiwan within the range of those found for the other countries involved in the proceedings appeared to be an appropriate basis for establishing export price.

(38) All exports to the Community by the two Brazilian cooperating exporting producers were made to a single related importer which partly resold the product to a related trader in the Community. Therefore the export price had to be determined on the basis of the price at which the imported product was first resold to an independent buyer in the Community both in the case of the related importer and in the case of the related trader. From the resale price all costs between importation and resale to independent parties, as well as a reasonable amount for profit have been deducted, so as to establish a reliable export price at the Community border, in conformity with Article 2(9) of the Basic Regulation. The amount for profit has been determined by reference to those realised by cooperating independent importers.

(39) As far as the USA is concerned, as no cooperation was obtained by the sole American exporting producer, the export price had to be established on the facts available according to Article 18 of the Basic Regulation. The export price resulting from Eurostat data could not be considered reliable as all imports originating in the USA were made by an importer related to the American exporting producer in question. The export price was therefore constructed on the basis of the price at which a substantial quantity of MSG was resold by the related importer to an independent customer which cooperated in the investigation. Since the related importer, like the exporting producer, did not cooperate in the investigation, it was considered appropriate to base the adjustments for all costs incurred between importation and resale, and for profits accruing, on those used for the related

importer from Brazil, which cooperated in the investigation.

- (40) As far as Vietnam is concerned, it was found that the export volume of the cooperating Vietnamese exporting producer was immaterial and hence not an appropriate basis for the determination of the weighted average export price. Therefore, also for Vietnam the export price had to be established on the facts available according to Article 18 of the Basic Regulation. Eurostat data, which were found to be in line with the export price alleged in the complaint and with the prices of import transactions verified at the premises of one cooperating unrelated importer were considered an appropriate basis to establish the export price.

4. Comparison

- (41) The weighted average normal value thus established was compared to the weighted average export price, in accordance with Article 2(11) of the Basic Regulation. With regard to Korea, Taiwan, Brazil and the USA, the comparison was made on an ex-factory basis, while with regard to Vietnam, the comparison was made on a fob exporting country basis. In all cases, the comparison was made at the same level of trade. For the purpose of ensuring a fair comparison, account was taken, in accordance with Article 2(10) of the Basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. In this respect, adjustments were made for transport, insurance, handling, loading and ancillary costs and credit costs.
- (42) Ajinomoto submitted that about one third of domestic sales in Brazil were made to a great number of small industrial users and retail customers, while export sales from this country to the Community were made to large industrial users only. Therefore, because of this market difference, domestic sales to small industrial users and retail customers should not be taken into account for the calculation of normal value for the purpose of a fair comparison with export prices. In this respect it should be noted that only domestic sales to industrial end users have been taken into account for comparison purposes. Furthermore no consistent price pattern was applied by Ajinomoto in relation to the purchase volume of its customers: in many cases medium-sized customers, and sometimes very small customers paid lower prices than the two main customers representing a major part of total domestic sales. Finally no evidence has been

provided indicating performance of different functions in relation to the category of customers in question. Therefore, no adjustment could be made in this respect.

5. Dumping margin

- (43) The comparison showed the existence of dumping, the dumping margin being equal to the amount by which the normal value, as established, exceeded the price for export to the Community. The exact dumping margin for Taiwan and Vietnam is not given, as its disclosure would allow third parties to reconstruct confidential information concerning the cooperating exporting producers in Korea and Thailand respectively. The dumping margins, expressed as a percentage of the CIF Community-frontier import price, are as follows.

Indonesia

As mentioned above, total imports from Indonesia to the Community during the investigation period amount to only 20 tonnes and, therefore, it was not considered appropriate to calculate the dumping margin for such a low volume. In these circumstances, the Commission considered that what was especially relevant with regard to Indonesia was to examine, as done below, whether, in case the measures were removed or varied, dumping would be likely to recur.

Korea

— Cheil Jedang Corporation 42,5 %

In order not to provide a bonus for non-cooperation, for the Korean companies which did not cooperate in the investigation or did not make themselves known, it was considered appropriate to establish the dumping margin on the basis of the representative export transaction of the Korean cooperating company with the lowest export price, and hence the most dumped. Thus the dumping margin established for non-cooperating companies in Korea is 44,2 %.

Taiwan

— All companies above 40 %.

Brazil

The two cooperating exporting producers in Brazil, though legally two separate companies, were related to each other. According to the past practice of the Community institutions with regard to related companies involved in anti-dumping proceedings,

and in order to avoid any circumvention, only one dumping margin has been established for these two companies. The dumping margin amounts to 19,9 %.

With regard to non-cooperating Brazilian exporting producers or those who did not manifest themselves, normal value and export price had to be established pursuant to Article 18 of the Basic Regulation on the basis of the facts available. In this respect it was considered that, given that almost the totality of the imports into the Community are covered by the cooperating exporting producers the findings made with regard to them provided the most appropriate basis. Thus, the residual dumping margin established for any non-cooperating exporting producer in Brazil amounts to 19,9 %.

Unites States of America

— ADM 38,9 %

For the known American producer without exports to the Community during the investigation period, Ajinomoto USA Inc., as well as for any other company which might start to produce and export MSG in future to the Community, it has been found appropriate to apply the same dumping margin as for ADM which covered the totality of American exports to the Community during that period.

Vietnam

Since Vietnam is considered to be a non-market economy country, a single countrywide dumping margin was established.

— All companies above 40 %

D. DEFINITION OF THE COMMUNITY INDUSTRY

- (44) The complainant Community producer is the sole producer of the like product in the Community and constitutes the Community industry in the meaning of Article 4(1) of the Basic Regulation.

E. INJURY WITH RESPECT TO THE COUNTRIES SUBJECT TO THE NEW INVESTIGATION

1. Preliminary remarks

- (45) The circumstances of imports from the countries subject to the review investigation, in particular, the withdrawal of Indonesia from the Community market and the sharp decrease in imports from

Korea and Taiwan, which are made under inward-processing arrangements, has led the Commission to consider it appropriate to focus on the likelihood of the analysis of recurrence of injury in respect of these imports, as well as unnecessary to decide whether they should be cumulated with those from the countries subject to the new investigation.

- (46) As there is only one Community producer and owing to the confidential nature of the information relating to injury indicators, the data concerning the development of production, capacity, capacity utilisation, Community consumption, sales volume, market shares, price evolution and profitability is presented in the form of indices, starting from a base of 100 for 1994 figures.

2. Consumption in the Community

- (47) Consumption of MSG in the Community was calculated on the basis of imports (Eurostat) plus sales in the Community by Orsan. On this basis consumption was overall on an increasing trend over the period examined (1 January 1994 to 30 June 1997) despite a dip in 1995. It was on an indexed basis, 100 in 1994 and decreased to 91 in 1995. In 1996, it increased to 101 with a further increase to 106 during the investigation period.

3. Imports of MSG in the Community from the countries subject to the new investigation

(a) Cumulation

- (48) In accordance with Article 3(4) of the Basic Regulation, where imports of a product from more than one country are simultaneously subject to an anti-dumping investigation, the effects of such imports shall be cumulatively assessed only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) and that the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.
- (49) As shown in the table below, the volume of imports and corresponding market share are considered significant during the investigation period. Furthermore, the dumping margins for the three countries were found to be substantially above *de minimis* levels. On this basis it was further considered whether the conditions of competition were such as to justify a cumulative

assessment of the imports from the three countries. In this respect it was found that the prices of these imports were all in the same range.

Country	Import volume in tonnes	Market share in %	Price level in ecu
USA	8 809	14 %	990
Brazil	8 724	14 %	976
Vietnam	5 382	8,6 %	1 042

It should also be recalled that MSG imported from the three countries and that produced and sold by the Community industry is entirely interchangeable, that the market is transparent and similar sales channels are used. It was therefore considered that a cumulative assessment of the effects of the imports from the countries subject to the new investigation is also appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

(b) *Volume, value and market share of dumped imports*

- (50) The volume of imports from the three countries concerned by the new investigation increased from 5 766 tonnes in 1994 to 22 915 tonnes during the investigation period, an increase of almost 300 %. During the same period, the value of these imports increased from around ECU 6 million to ECU 22,8 — an increase of around 275 %.

- (51) In terms of market shares based on total consumption, the market penetration of the dumped imports in volume rose from 9,7 % in 1994 to 36,6 % during the investigation period — an increase of 276 %.

(c) *Prices of dumped imports*

- (52) For the determination of price undercutting regarding the countries concerned, the Commission analysed data referring to the investigation period.

Price undercutting was established on the basis of a comparison of the export price, conventional duty paid, with the ex-works prices charged by the Community industry at the same level of trade. When determining the Community industry's sales prices, the Commission had to decide whether

Ajinomoto and the Community producer were related to an extent that the price at which the Community producer sold MSG to Ajinomoto could not reliably be accepted as an arm's length price and should be excluded from the price-undercutting determination. However, it was not considered necessary to decide on this issue as the large majority of the Community producer's sales in the Community were directly made to other unrelated clients. Thus, the latter prices were sufficiently representative.

For Brazil, Vietnam and the USA the weighted average ex-works Community producer sales prices to the first independent customer in the Community were compared to the weighted average export prices used for the determination of dumping, adjusted to Community frontier duty-paid levels and an allowance in respect of post importation costs.

The price comparison for exports from Brazil, the USA and Vietnam showed that these prices had undercut those of the Community industry by 4,3 %, 3,4 % and 4 % respectively.

4. *Situation of the Community industry*

- (53) The examination of the injury trends covered the period from 1994 to the end of the investigation period. It should be noted that during this period anti-dumping measures as mentioned above in recitals 1 and 2 were in force with a resulting effect on the situation of the Community industry.

(a) *Production, capacity and capacity utilisation*

- (54) Production by the Community industry increased from 1994 to 1995, in index terms, from 100 to 106, and decreased in 1996 to 99. During the investigation period, Community production further decreased to 86. The Community industry's production capacity for the product concerned remained by and large stable. The capacity increased in 1995 to 102 and thereafter decreased in 1996 to 98 and during the investigation period to 96. Between 1994 and the investigation period, the capacity utilisation rate varied between 100 and 89.

(b) *Stocks*

- (55) Stocks significantly increased between 1994 and 1996 (+ 97 %). During the investigation period stock levels decreased substantially due to the change in production process.

(c) Sales and market share

- (56) The Community producer's sales volume in tonnes increased from 100 in 1994 to 104 in 1995. In 1996, the quantity sold was 107 and during the investigation period it decreased slightly to 102. The market share of the Community producer increased, also on an indexed basis, from 100 in 1994, to 114 in 1995, dropped to 107 in 1996 and fell again to 97 during the investigation period. It should be noted that its market share was at all times very substantial.

(d) Average sales price and price evolution

- (57) The Community industry's sales prices decreased from 100 in 1994 to 95 in 1995, remained stable at 95 in 1996 and fell in the investigation period to 91.

(e) Profitability

- (58) 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 appropriate in the Regulation under review, but remained so low over an extended period of time that the industry's viability remained precarious.

The already low profitability prevailing in 1994, decreased in 1995, underwent a further sharp decrease in 1996, when the Community industry moved into a loss-making situation. The downward trend continued up to the end of the investigation period.

(f) Investment

- (59) The Community producer substantially increased its investments over the period examined by a factor of 3. These investments reflected principally the change in production process which the producer decided to put into effect.

5. Conclusion on injury

- (60) The examination of the abovementioned indicators shows that, notwithstanding certain positive effects of the existing measures on the Community industry, its financial situation remains precarious and worsened with financial losses being incurred during the investigation period. Furthermore, the development of sales prices was negative with the

lowest level reached during the investigation period, and the market share decreased up to the end of that period. While material injury was already established by the Regulation subject to review, the examination of the facts established in the new investigation demonstrate that material injury has persisted in the subsequent period.

F. CAUSATION**1. Introduction**

- (61) The Commission examined whether the injury suffered by the Community industry was caused by the dumped imports from the countries concerned by the new investigation or whether other known factors, such as the evolution of other imports, consumption in the Community market, the export activity and price policy of the Community industry, had caused that injury or contributed to it, in order to ensure that any injury caused by these factors is not attributed to the dumped imports.

2. Effect of the dumped imports

- (62) Cumulated imports from the countries concerned by the new investigation increased their total market share from 9 % in 1994 to 36 % in the investigation period, i.e. by 27 percentage points or 300 %. In contrast, the Community industry increased its market share by 14 % between 1994 and 1995, but overall had a decrease in market share of 3 % between 1994 and the investigation period.

It should be noted that the temporary increase of the market share of the Community industry coincided with the imposition of amended anti-dumping measures on four countries, i.e. Indonesia, Korea, Thailand and Taiwan, in 1995. It is clear from the above that this increase was not sustained as the Community industry lost market share since 1995 in a period in which the imports from the countries subject to the new investigation substantially increased. This shows that the Community industry could not actually benefit from the effect of measures imposed against Indonesia, Korea, Thailand and Taiwan in 1995, as the decreasing imports from the above countries (– 10 554 tonnes between 1994 and the investigation period) were immediately more than compensated for by an increase in dumped imports from the USA, Brazil and Vietnam (+ 17 147 tonnes between 1994 and the investigation period).

- (63) In addition, price undercutting was found in the countries concerned by the new investigation. In view of the price sensitivity and transparency of the market, these low priced imports, well known to the potential customers of the Community industry, could not have failed to have an effect on the prices of the Community industry and thus depressed its prices. As a result of the foregoing, the Community industry had to adjust its prices to the market situation in order to avoid losing its market share. This defensive behaviour by the Community industry was even more necessary as from a technological point of view this industry has to maintain a continuous cycle of production and cannot reduce or easily adapt its production in order to limit the negative effects of such a price pressure resulting from low-priced dumped imports.

The consequent impact on the Community industry of increasing and low-priced imports from the countries concerned by the new investigation culminated in the investigation period when the volume of imports from the countries concerned to the Community was most significant. It is in this period that the situation of the Community industry was at its worst, in particular in terms of profitability, prices and market share.

- (64) The cooperating Brazilian exporting producers claimed that Brazilian imports did not cause material injury to the Community industry. In this respect they argued that in the period under consideration Brazilian import prices were above the prices of the USA and Vietnam. Furthermore, they claimed that their market share between 1992 and the investigation period was stable. In their view, Brazilian imports did not thus dictate the price evolution in the Community market.

In this respect it was established that the Brazilian dumped imports increased their volume between 1994 and the end of the investigation period by 101 % and their resulting market share reached a peak in the investigation period, almost doubling as compared to 1996. Furthermore, it was found that imports from Brazil significantly undercut prices of the Community industry. In any event, it was established that already in 1996 and in the investigation period Brazilian import prices were below the average prices of MSG originating in the USA and Vietnam, and thus depressed the Community industry's sales prices. For the reasons

mentioned above, the arguments and claims put forward on this point had to be rejected.

3. Effect of other factors

Other imports

- (65) The effects of imports other than those from Brazil, the United States and Vietnam on the Community industry were also examined on the basis of the figures reported by Eurostat and those obtained in the review investigation. Imports made from countries neither subject to the new nor the review investigation amounted during the investigation period to a volume of 1 400 tonnes representing a total market share significantly below 2 %. These imports were made mainly from Switzerland, China, Peru, Thailand and Hong Kong and, with the exception of Hong Kong, were usually made at substantially higher prices than those from the countries concerned by the new investigation. The quantities imported from Hong Kong were, in any event, very low.
- (66) Imports made from the countries subject to the review investigation; i.e. Indonesia, Korea and Taiwan amounted, during the investigation period, to a volume of around 3 000 tonnes representing a total market share of around 5 %. These imports were usually made at prices which were broadly in line with prices from the countries concerned by the new investigation.

Development of consumption

- (67) Although Community consumption decreased from 1994 to 1995, it increased overall during the period examined by 6 %.

Export activity of the Community industry

- (68) Ajinomoto argued that the injury suffered by the Community industry is also due to its decision to promote export rather than Community sales. It should be recalled that exports were not a major activity for the Community industry during the period examined and, contrary to the claim of Ajinomoto have decreased slightly in volume during the period under examination.

Any change in this respect could only have had a small impact on the state of the Community industry, in particular as far as production, capacity and cost of production are concerned. In any event the injury has been established on data pertaining to the Community market and not on the export performances of the Community industry.

Self-inflicted injury

- (69) According to Ajinomoto, the injury suffered by Orsan is not related to the dumped imports originating in the countries concerned by the new investigation and in particular in Brazil, but is mainly due to Orsan's plan to expand capacity.

It was established that during the period under review the Community producer has not expanded its capacity, on the contrary it has slightly reduced it. In addition, it was found that the Community producer during the investigation period switched its production process to one using a new raw material. This was done in the framework of a broader integrated new investment programme by the major shareholder of the Community producer. For the Community producer this investment was meant to result in a more cost-efficient production set-up. In this respect it should be noted that this switch to a new production process affected only part of the investigation period during which the Community producer incurred certain start-up costs. The Commission has identified any such cost element which could have inflated the cost of production and resulting financial losses and adjusted the data shown under point E accordingly, in order to eliminate any effect of this start-up phase on the injury assessment.

4. Conclusion

- (70) Given the fact that MSG is a commodity-type product, offered in a transparent market through similar sales channels in the Community, it was considered that dumped imports of MSG originating in the three countries subject to the new investigation, taken in isolation, have caused material injury to the Community industry.

This conclusion has been confirmed by the analysis carried out in respect of any other possible factors causing injury, notably imports from the countries concerned by the review investigation, which decreased substantially up to the investigation period, and the switch of the production process carried out by the Community industry. None of these factors was such as to break the causal link between the material injury suffered by the Community industry and the dumped imports from the countries concerned by the new investigation.

G. LIKELIHOOD OF CONTINUATION AND RECURRENCE OF INJURIOUS DUMPING (WITH REGARD TO THE COUNTRIES SUBJECT TO THE INTERIM REVIEW)

1. Indonesia

- (71) As far as Indonesia is concerned, practically no exports of MSG were found to have been made by this country to the Community during the investigation period. This is why the examination of the likelihood of the recurrence of dumping in respect of Indonesia was especially relevant in this investigation.
- (72) It was found that the cooperating Indonesian exporting producers reached capacity utilisation rates for MSG production of 93 % on average during the investigation period and, therefore, the disposable capacity for future exports to the Community is limited. It was also found that the Indonesian exporting producers have no plans to increase their MSG production capacity in the near future. In any event, any new investment with that aim would only have medium-term effect since it takes around two years for a new MSG production line to become operational.
- (73) It was also established that nearly half of the Indonesian production of MSG is sold domestically at profitable prices. However, the other half of the production was exported to non-Community countries at prices which were lower than those prevailing in the Indonesian and the Community markets. Consequently, it cannot be excluded that in the absence of measures, this price difference would constitute an incentive to redirect exports at dumped prices to the Community.
- (74) It should be noted, though, that unlike imports from Taiwan and Korea, imports of MSG from Indonesia rapidly declined in 1995 and disappeared from the Community market from 1996 onwards. The investigation has shown that the rapid decline in 1995 was not prompted by the provisional anti-dumping duties imposed in July of that year because they did not concern all Indonesian exports, as some exports could still be made on the basis of price undertakings. Furthermore, the provisional duty level was similar to that of the duties imposed on exporting producers in Korea and Taiwan where none of the exporting producers benefited from undertakings.

While the definitive anti-dumping duties imposed in January 1996 concerning the three above countries could be an explanation for a low level of

imports, they do not explain Indonesia's total absence from the Community market. Indeed, notwithstanding the imposition of definitive duties, there were still significant imports from Korea and Taiwan. In particular, the Indonesian exporting producers could, as was the case for Korean and Taiwanese exporting producers, maintain their presence in the Community under inward-processing arrangements which are exempted from the collection of duties.

- (75) On balance, it was therefore concluded that any likelihood of a resumption of Indonesian exports and hence a recurrence of injurious dumping is very remote.

2. Korea

- (76) With respect to Korea it was found that the import volume and the corresponding market share was not at a negligible level during the investigation period. These imports decreased continuously from 1994 onwards (– 88 % until the investigation period) with a growing decrease between 1995 and 1996, period during which revised anti-dumping measures at a higher level were imposed. Furthermore, these imports were dumped. As far as the pricing behaviour during the investigation period is concerned it has to be noted that practically all imports were made for inward-processing purposes and were therefore not subject to any conventional or anti-dumping duty. On the basis of the analysis of the actual imports, undercutting of the prices of the Community industry of 11 % was established. The prices of Korean imports in 1996 and the investigation period were the highest of all countries subject to the investigations.

- (77) As far as the recurrence of injurious dumping is concerned, it was considered that the prices obtained for inward-processing sales were an appropriate estimate of the price level at which imports released for free circulation would be made in the Community in the absence of anti-dumping measures. On this basis and taking into account the conventional duty level of 12,5 % such prices would not undercut those of the Community industry.

However, it should be noted that the prices of the Community industry were depressed and made a loss. Thus Korean export prices would undersell Community prices by a significant amount, even after the imposition of conventional duty, should the duties lapse.

- (78) It was further found that the cooperating Korean exporting producer reached capacity utilisation rates for MSG production of around 90 % on average during the investigation period and, that

therefore, the free capacity available for future exports by this exporting producer to the Community is limited. It was also found that the Korean exporting producer has no plans to increase its MSG production capacity in the near future.

- (79) As far as its domestic market is concerned, only 15 % of the Korean exporting producer's production of MSG is sold domestically at profitable prices. The other share of the production is exported to non-Community countries at prices which were lower than those prevailing in Korea and the Community. Consequently, it cannot be excluded that, in the absence of measures, the relatively higher price in the Community market would constitute an incentive to redirect exports from non-member countries at dumped prices to the Community. In any event it should be borne in mind that the analysis of the recurrence of injurious dumping in the absence of anti-dumping measures was considerably hampered by the non-cooperation of a significant Korean exporting producer.

3. Taiwan

- (80) At the outset it should be noted that there was no cooperation by any Taiwanese exporting producer. Therefore it was not possible to make any detailed company-data based analysis of the recurrence of injurious dumping in the absence of anti-dumping measures.

With respect to Taiwan it was found that the import volume and the corresponding market share was also above a negligible level during the investigation period. Despite a significant decrease in market share from 1994 onwards, this decrease was substantially less pronounced than in the case of Indonesia and Korea (– 46 % until the investigation period). Furthermore, these imports were dumped.

- (81) As far as the pricing behaviour during the investigation period is concerned it has to be noted that practically all imports were made for inward-processing purposes and were therefore not subject to any conventional or anti-dumping duty. On the basis of the analysis of the actual imports, undercutting of the prices of the Community industry of 16,7 % was established.

- (82) As far as the recurrence of injurious dumping is concerned, it was considered that the prices obtained for inward-processing sales were an appropriate estimate of the price level at which

imports released for free circulation would be made in the Community in the absence of anti-dumping measures. On this basis and taking into account the conventional duty level of 12,5 % such prices would still undercut those of the Community industry by an amount of 6 % broadly in line with the undercutting margins found with respect to the countries concerned by the new investigation. Only by maintaining the presently imposed anti-dumping duty would there be no undercutting.

4. Conclusion

- (83) As regards the situation of Korea and Taiwan the substantial dumping established during the investigation period constitutes a demonstration of the likelihood of the continuation of dumping should the measures in force be repealed. Furthermore, the incentives to redirect exports to the Community and the underselling level found for Korea as well as the undercutting level found for Taiwan point to a recurrence of injury where the measures would be removed.
- (84) On the contrary, with regard to Indonesia, measures should be repealed since the likelihood of recurrence of injurious dumping is too remote.

H. COMMUNITY INTEREST

1. Introduction

- (85) It should be recalled that in the previous investigations relating to the countries concerned by the review, the adoption of measures was considered to be in the interest of the Community. Furthermore, it should be noted that one of the present investigations is a review, thus analysing a situation in which anti-dumping measures have already been in place. Consequently, the timing and nature of the present investigations would allow the assessment of any negative undue impact on the parties concerned by anti-dumping measures imposed.

On this basis it was examined, whether, despite the conclusions on dumping, injury and recurrence of injurious dumping respectively, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to impose or maintain measures in this particular case. For this purpose, and pursuant to Article 21(1) of the Basic Regulation, the Commission considered the impact of measures for all parties involved in the proceedings and also the consequences of not taking/maintaining measures.

2. Interest of the Community industry

- (86) The purpose of anti-dumping measures is to remedy an unfair trading practice that has an injurious effect on a Community industry. Such a remedy should result in the re-establishment of a situation of effective competition which, as such, is in the interest of all the operators in the Community.
- (87) In the course of this investigation it has been established that the Community industry is viable, but continues to suffer injury, and that it is highly probable that, without anti-dumping measures, the precarious financial situation of the Community industry will further deteriorate. Thus, the existence of the Community industry and hundreds of jobs may ultimately be at risk.

Furthermore, the ongoing restructuring efforts made by the Community industry show that it is not ready to abandon this segment of production. The imposition and maintenance of anti-dumping measures would therefore be in the interest of the Community industry.

3. Impact on users

- (88) No Community user submitted any substantiated information during the current investigations concerning the incidence in their cost of production of the measures in force.
- (89) However, some interested parties argued that the international competitive position of products incorporating MSG, produced in the Community, would be jeopardised by the continuation or imposition of the anti-dumping measures. However, it was established that MSG used for the production in the Community of products for export can enter the Community without any duty under the inward-processing arrangements and thus it was concluded that this argument has to be dismissed.
- (90) Another interested party claimed that it is against the Community interest to continue imposing anti-dumping duties on imports of MSG owing to the fact that the Community industry would not be able to supply the Community market with sufficient quantities. In this respect it was found that, in view of the fact that the Community industry has a significant market share, is viable and has invested significant amounts in new production capacity, and given the presence of other suppliers located outside of the Community, the risk of a general supply shortage is very low.
- (91) As far as the competitive environment of the Community market is concerned, user industries and other economic operators have always enjoyed the presence of a number of competitors in the

market, since the Community industry, even exploiting its entire production capacity, could not satisfy the entire demand on the Community market.

Imports from third countries will therefore always be necessary. After the imposition of anti-dumping measures, exporting producers located in the countries concerned would be able to continue exporting to the Community at fair prices.

- (92) Following the lack of substantiated information submitted by the users concerning the impact of the measures in force on the structure of the cost of production of food processors using MSG, a subsequent analysis was not performed. Nevertheless, users of MSG pointed out that the incidence of the actual measures on their cost of production was insignificant. Furthermore, it should be noted that MSG users have the possibility of switching to substitute products, should the prices of MSG increase substantially.

4. Consequence for competition in the Community market

- (93) As far as the competitive environment in the Community market is concerned, two aspects have to be highlighted. First, the measures proposed below are not such as to foreclose the Community market to the exporting producers under investigation and therefore it will allow the continued presence of these exporting producers in the market.

Secondly, as far as imports from Taiwan and Korea to the Community are concerned, which were found to have lost a considerable amount of the market share during the period under investigation, there are no indications that these could not increase their presence in the Community market once fair competitive conditions are restored with regard to dumped imports from other sources. This is further reinforced by the fact that the level of the measures proposed for Taiwan and Korea is lower than those presently in force. Thus, the benefit of a market driven by a number of suppliers would still be available for users of the product concerned.

- (94) Furthermore special attention has been paid, during the present investigation, to the importance of the position of Ajinomoto not only in the Community market, but worldwide. Ajinomoto is the biggest player in the MSG business. On the basis of available information, it is considered that without the imposition of anti-dumping measures, there is the danger that the Community producer will be driven out of the market. This has already

happened to two other Community producers. As a consequence there would be less competition in the market. Indeed, in such a situation Ajinomoto would have a strong position in the Community market. Industrial users would thus be deprived of the benefit of genuine competition and among other consequences prices may increase. It must, furthermore, be noted that globally Orsan's position is much less important than the position of Ajinomoto, the latter having a multitude of production facilities worldwide.

5. Conclusion

- (95) On the basis of the above facts and considerations in particular, and having examined the arguments submitted by the Community industry, Community users and importers of the product concerned, it is considered that, on balance, there are no compelling reasons which would indicate that the imposition or maintenance of measures would not be in the Community interest.

I. TERMINATION OF THE PROCEEDING IN RESPECT OF THE USA

- (96) Concerning the USA, by the end of 1997, i.e. after the end of the investigation period, ADM definitively terminated its production of MSG. The one remaining producer in the USA had never exported MSG to the Community and indeed was itself an importer of MSG into the USA, its production being less than that required to meet the domestic demand. Moreover this producer, after the closure of ADM, will face a domestic demand substantially in excess of its production capacity. Therefore, it is considered unlikely that this producer will change its prior behaviour. In these circumstances no protective measures are necessary.

J. DEFINITIVE DUTIES

1. Injury elimination level

- (97) For the purpose of establishing the level of the duty to be imposed, it was considered that the prices of the dumped imports should be increased to a non-injurious level. The necessary price increase was determined on the basis of a comparison of the weighted average import price used to establish price undercutting, as outlined above, with the production costs of the sole Community producer and a reasonable profit margin. The profit level used which cannot be stated for reasons of

confidentiality and which is less than that 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 in the measures under review.

It should be noted that as the Community industry was in a start-up period, being changed its production process, the Commission duly adjusted downwards the cost of production of the Community industry used for the purpose of determining the above non-injurious level.

- (98) The same methodology was applied to establish residual injury margins for non-cooperating exporting producers in the countries concerned. In this respect export prices established for the determination of residual dumping margins were used as a basis.

The above comparison showed injury margins which, on a weighted average basis expressed as a percentage of the free-at-Community-frontier price, ranged per country from 10,5 % to 20,4 %.

- (99) Since the injury margins found are lower than the respective dumping margins, the definitive duties to be imposed should correspond to the injury margins established, in conformity with Article 9(4) of the Basic Regulation.

2. Type of definitive duty

- (100) The existing measures have the form of specific duties as a result, *inter alia*, of the violation of undertakings by producers in Taiwan and Korea. Nevertheless, due to the fact that new measures have to be imposed on Brazil and Vietnam, and that pursuant to Article 9(5) of the Basic Regulation the duties have to be imposed on a non-discriminatory basis, it was considered appropriate to impose *ad valorem* duties for all countries concerned,

HAS ADOPTED THIS REGULATION:

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 Brazil and Vietnam.

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
Brazil	All companies	17,8 %	—
Vietnam	All companies	16,8 %	—

Article 2

Article 1 of Regulation (EC) No 81/96 is hereby replaced by the following:

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'

Article 3

The proceeding in respect of imports of monosodium glutamate originating in the USA and Indonesia is hereby terminated.

Article 4

Unless otherwise specified, the provisions in force concerning customs duties shall apply to the said duties.

Article 5

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, 24 September 1998.

For the Council

The President

N. MICHAŁEK
