

COMMISSION IMPLEMENTING REGULATION (EU) 2021/633**of 14 April 2021****imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China and in Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ (hereinafter referred to as 'the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

- (1) Following an anti-dumping investigation ('the original investigation, China'), the Council imposed, by means of Regulation (EC) No 1187/2008 ⁽²⁾, a definitive anti-dumping duty on imports of monosodium glutamate ('MSG') originating in the People's Republic of China ('the PRC' or 'China').
- (2) In January 2015, by Implementing Regulation (EU) 2015/83 ⁽³⁾, the European Commission ('the Commission') imposed a definitive anti-dumping duty on imports of MSG originating in China following an expiry review in accordance with Article 11(2) of the basic Regulation ('previous expiry review').
- (3) In January 2015, by Regulation (EU) 2015/84 ⁽⁴⁾, the Commission imposed anti-dumping duties on imports of MSG originating in Indonesia ('the original investigation, Indonesia').
- (4) The rates of anti-dumping duty currently in force range from 33,8 % to 36,5 % on imports from the exporting producers that cooperated in the original investigation, and 39,7 % on imports from all other companies in China. As for Indonesia, the rates of anti-dumping duty currently in force range from 7,2 % to 13,3 % on imports from the exporting producers that cooperated in the original investigation, Indonesia, and 28,4 % on imports from all other companies in Indonesia.

1.2. Request for an expiry review

- (5) Following the publication of two notices of impending expiry ⁽⁵⁾, the Commission received two requests for review pursuant to Article 11(2) of the basic Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 1187/2008 of 27 November 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of monosodium glutamate originating in the People's Republic of China (OJ L 322, 2.12.2008, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2015/83 of 21 January 2015 imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 15, 22.1.2015, p. 31).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/84 of 21 January 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of monosodium glutamate originating in Indonesia (OJ L 15, 22.1.2015, p. 54).

⁽⁵⁾ Notices of the impending expiry of certain anti-dumping measures (OJ C 165, 14.5.2019, p. 4 and p. 5).

- (6) Both requests were lodged on 21 October 2019 by Ajinomoto Foods Europe S.A.S. ('AFE' or 'the applicant'), representing 100 % of the total Union production of MSG. The requests were based on the grounds that the expiry of the measures would be likely to result in continuation and recurrence of dumping and continuation or recurrence of injury to the Union industry ⁽⁶⁾.

1.3. Initiation of an expiry review

- (7) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 21 January 2020 the Commission initiated an expiry review with regard to imports of MSG originating in the PRC and in Indonesia ('the countries concerned') on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁷⁾ ('the Notice of Initiation').

1.4. Parallel anti-circumvention investigation

- (8) On 19 February 2020, the Commission initiated an investigation, pursuant to Article 13(3) of the basic Regulation, concerning possible circumvention of anti-dumping measures in force with regard to imports of MSG originating in the PRC, and made such imports subject to registration ⁽⁸⁾. The initiation of the investigation followed a request submitted by Ajinomoto Foods Europe S.A.S. the company which is also the applicant of the current expiry reviews. The product under investigation for possible circumvention was MSG in mixture or in solution, containing by dry weight 50 % or more of MSG.
- (9) The investigation concluded that the existing measures on imports of MSG originating in the PRC were circumvented by imports of the product under investigation. By Regulation (EU) 2020/1427 ⁽⁹⁾ the Commission extended the measures in force to imports of MSG in mixture or in solution, containing by dry weight 50 % or more of MSG, originating in the PRC.

1.5. Review investigation period and period considered

- (10) The investigation of continuation or recurrence of dumping covered the period from 1 January 2019 to 31 December 2019 (the 'review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2016 to the end of the review investigation period ('the period considered') ⁽¹⁰⁾.

1.6. Interested parties

- (11) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, the known producers of MSG in China and Indonesia and the authorities of the countries concerned, known importers and users about the initiation of the investigation and invited them to participate.

⁽⁶⁾ Due to the fact that there is only one producer of MSG in the Union, some of the data in this Regulation are presented in ranges or in index form to preserve the confidentiality of the data of the Union producer.

⁽⁷⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of monosodium glutamate originating in the People's Republic of China and in Indonesia (OJ C 20, 21.1.2020, p. 18).

⁽⁸⁾ Commission Implementing Regulation (EU) 2020/230 of 19 February 2020 initiating an investigation concerning possible circumvention of anti-dumping measures imposed by Implementing Regulation (EU) 2015/83 on imports of monosodium glutamate originating in the People's Republic of China, and making such imports subject to registration (OJ L 47, 20.2.2020, p. 9).

⁽⁹⁾ Commission Implementing Regulation (EU) 2020/1427 of 12 October 2020 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2015/83 on imports of monosodium glutamate originating in the People's Republic of China to imports of monosodium glutamate in mixture or in solution originating in the People's Republic of China (OJ L 336, 13.10.2020, p. 1).

⁽¹⁰⁾ On 31 January 2020, the United Kingdom withdrew from the Union. The Union and the United Kingdom jointly agreed on a transition period during which the United Kingdom remained subject to Union law, which ended on 31 December 2020. The United Kingdom is no longer a Member State of the Union and therefore the figures, findings and conclusions in this Regulation treat the United Kingdom as a third country.

- (12) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6.1. Sampling

- (13) In view of the apparent large number of producers in the countries concerned and unrelated importers in the Union, the Commission stated in the Notice of Initiation that it might sample the producers and unrelated importers in accordance with Article 17 of the basic Regulation.

1.6.1.1. Sampling of producers in the People's Republic of China and Indonesia

- (14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all producers in China and Indonesia to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Missions of the PRC and Indonesia to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (15) Two exporting producers in the PRC provided the requested information and agreed to be included in the sample. The Commission invited these companies to participate in the investigation and sent questionnaires to them. In view of the low number, the Commission decided that sampling was not necessary and informed all the interested parties by a Note to the file.
- (16) The Commission notified the Mission of the PRC that due to the insufficient cooperation from these two exporting producers in the PRC, it intended to apply Article 18 of the basic Regulation and therefore base its findings on continuation or recurrence of dumping and injury in respect of the PRC on the facts available. No comments were received in response to this notification.
- (17) No exporting producer in Indonesia came forward. Nevertheless, one group of companies in Indonesia producing and selling MSG on the Indonesian domestic market ('group of cooperating Indonesian producers') submitted the sampling forms. These companies were not exporting the product under review to the Union. The Commission invited these companies to participate in the investigation and sent questionnaires to them.
- (18) The Commission notified the Mission of Indonesia that due to the insufficient cooperation from exporting producers/producers in Indonesia, it intended to apply Article 18 of the basic Regulation and therefore base its findings on continuation or recurrence of dumping and injury in respect of exporting producers/producers in Indonesia on the facts available. No comments were received in response to this notification.

1.6.1.2. Sampling of importers

- (19) To decide whether sampling was necessary and, if so, to select a sample, the Commission invited unrelated importers to provide the information specified in the Notice of Initiation.
- (20) Four unrelated importers provided the requested information and agreed to be included in the sample. The Commission decided that sampling was not necessary and to investigate all unrelated importers that came forward. All four unrelated importers fully cooperated by submitting a complete questionnaire reply.

1.6.2. Replies to the questionnaire

- (21) Complete questionnaire replies were received from the group of cooperating Indonesian producers of MSG, the sole Union producer and four unrelated importers.
- (22) The Commission invited all the exporting producers/producers in the PRC that came forward and provided the requested information on sampling to complete the questionnaire for exporting producers. At the initiation, a copy of the questionnaire was made available on DG Trade's website.

- (23) No questionnaire replies of exporting producers/producers in the PRC were received. As mentioned above in recitals (15) and (16), the Commission notified the two exporting producers/producers in the PRC that came forward initially that it intended to apply Article 18 of the basic Regulation and therefore base its findings on facts available that may be less favourable to the party concerned. No comments were received.
- (24) Therefore, there was no cooperation from exporting producers/producers in the PRC or in Indonesia. However, as mentioned in recital (17), one group of companies in Indonesia producing and selling MSG on the Indonesian domestic market, but not exporting to the Union, cooperated.

1.6.3. Verification

- (25) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice')⁽¹⁾, the Commission was however unable to carry out verification visits at the premises of all companies. Instead, the Commission performed remote cross-checks ('RCCs') of the information provided by the following companies via videoconference:
- Ajinomoto Foods Europe SAS, Mesnil-Saint-Nicaise, France ('AFE')
 - Group of cooperating producers in Indonesia
 - PT Ajinomoto Indonesia, Indonesia
 - PT Ajinomoto Sales Indonesia, Indonesia.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (26) The product subject to this review is the same as the one covered by the previous investigations mentioned in recitals (1) to (4), namely monosodium glutamate originating in the PRC and Indonesia, currently falling under CN code ex 2922 42 00 (TARIC code 2922 42 00 10) ('the product under review'). MSG is a food additive and mainly used as a flavour enhancer in soups, broths, fish and meat dishes, spice blends and ready-made foods. It is produced in the form of white, odourless crystals of various sizes. MSG is also used in the chemical industry for non-food applications such as detergents.
- (27) It is mainly produced by fermentation of various sugar sources (corn starch, tapioca starch, sugar syrup, sugar cane molasses and sugar beet molasses).

2.2. Like product

- (28) As established in the previous investigations mentioned in recitals (1) to (4), this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product under review,
 - the product produced and sold on the domestic market of the countries concerned, and
 - the product produced and sold in the Union by the Union industry.

⁽¹⁾ Notice – On the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (2020/C 86/06) (OJ C 86, 16.3.2020, p. 6).

- (29) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (30) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC and/or from Indonesia.

3.1.1. PRC

- (31) None of the Chinese exporting producers/producers cooperated in the investigation. They failed to submit any information or provide supporting evidence regarding the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. Likewise, as mentioned in the recital (23), none of the exporting producers in China submitted a reply to the questionnaire.
- (32) The GOC did not provide any questionnaire reply nor addressed the evidence on the case file provided by the applicant, including the 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations' ('the Report') ⁽¹²⁾.
- (33) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation of dumping set out in recitals (36) to (135) were based on facts available, in particular, information in the request for the expiry review and statistics available, namely those from Eurostat and the Global Trade Atlas ('GTA').

3.1.2. Indonesia

- (34) As mentioned in recital (17), no exporting producer in Indonesia cooperated in the investigation. However, a group of Indonesian producers selling on the domestic market and other third country markets cooperated.
- (35) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation of dumping set out in recitals (137) to (144) were based on facts available, in particular, information in the request for the expiry review, statistics available, namely Eurostat and the GTA, and also, as explained in the recital (21), data submitted by the group of cooperating Indonesian producers.

3.2. Continuation of dumping during the review investigation period

3.2.1. PRC

- (36) For the review investigation period, the statistical data from Eurostat show that 3 500 tonnes of MSG were imported from the PRC, representing [4 – 7] % of the market share in the Union ⁽¹³⁾. The Commission concluded that such volume of imports is sufficiently representative to examine whether dumping continued during the review investigation period.

⁽¹²⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

⁽¹³⁾ As mentioned in recital (6) the applicant represents 100 % of the total Union production of MSG. Therefore, in order to protect business secrets, some data in this Regulation are presented only in ranges and/or indexes.

3.2.2. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of product under review originating in the PRC.

(37) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.

(38) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the Government of China ('GOC'). In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline.

(39) In point 5.3.2 of the Notice of Initiation the Commission also specified that, in view of the evidence available, Thailand was provisionally selected as an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a), first indent of the basic Regulation.

(40) On 21 February 2020, the Commission informed by a note ('first note on production factors') the interested parties on the relevant sources it intended to use for the determination of the normal value if the application of the methodology under Article 2(6a) of the basic Regulation would be confirmed. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of MSG. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission expressed its intention to choose Thailand or Malaysia as an appropriate representative country. The Commission invited interested parties to comment and received comments only by the applicant. It supported the choice of Thailand, due to the higher number of companies with publicly available data in this country. In its comments, the applicant also requested that the data of the suitable companies should be averaged to provide a better, more sound basis for the Commission's determinations, as compared to the use of data based on information for a single company.

(41) On 8 April 2020, the Commission informed by a second note ('second note on production factors') the interested parties on the relevant sources it intended to use for the determination of the normal value, with Thailand as the representative country if the application of the methodology under Article 2(6a) of the basic Regulation would be confirmed. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the following five companies, producers of MSG in the representative country:

(1) Ajinomoto Co. (Thailand) Ltd.

(2) Thai Fermentation Industry Co Ltd. (Racha Churos)

(3) Thai Churos

(4) Thai Foods International Co. Ltd.

(5) KT MSG.

(42) The Commission invited interested parties to comment and received comments only by one importer, who supported the selection of Thailand as the representative country.

3.2.2.1. Normal value

(43) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.

- (44) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks'*, and *'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'* (*'administrative, selling and general costs'* is referred hereinafter as *'SG&A'*).
- (45) As further explained in recitals (46) to (107), the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.3. Existence of significant distortions

3.2.3.1. Introduction

- (46) Article 2(6a)(b) of the basic Regulation defines *'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:*
- *the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country,*
 - *state presence in firms allowing the state to interfere with respect to prices or costs,*
 - *public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces,*
 - *the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws,*
 - *wage costs being distorted,*
 - *access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.*
- (47) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product under review. Indeed, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (48) Article 2(6a)(c) of the basic Regulation provides that *'[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'.*

- (49) Pursuant to this provision, the Commission has issued a country report concerning China (see footnote 12), showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as chemicals or corn processing). The Report was placed in the investigation file at the initiation stage. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation of which the Report was an integral part. No comment was received
- (50) The request for review provided additional evidence on significant distortions in the MSG sector within the meaning of Article 2(6a)(b), complementing the Report. The applicant provided evidence that the production and sale of the product under review is affected (at least potentially) by the distortions mentioned in the Report, in particular high levels of state interference in the MSG value chain, i.e. in the MSG sector and the sectors related to the production of MSG, in particular input sectors and the factors of production.
- (51) The Commission examined whether it was appropriate to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources, notably on Chinese legislation, published official Chinese policy documents, reports published by international organisations and studies/articles by renowned academics, specifically identified in the Report. That analysis covered the examination of the substantial government interventions in its economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC.
- (52) As specified in recital (32), the GOC did not provide any reply to the questionnaire. As mentioned in recital (23), nor was there cooperation from any exporting producers/producers in China. Furthermore, none of the exporting producers/producers in China that were granted the status of an interested party provided any evidence supporting or rebutting the existing evidence on the case file, including the Report, and the additional evidence provided by the applicant in the request for review on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

3.2.3.2. Significant distortions affecting the domestic prices and costs in the PRC

- (53) The Chinese economic system is based on the concept of a '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'⁽¹⁴⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership⁽¹⁵⁾.
- (54) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing

⁽¹⁴⁾ Report – Chapter 2, p. 6-7.

⁽¹⁵⁾ Report – Chapter 2, p. 10.

first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.'⁽¹⁶⁾ This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.

- (55) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market⁽¹⁷⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (56) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.2.3.5 below)⁽¹⁸⁾.
- (57) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.2.3.8 below)⁽¹⁹⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP⁽²⁰⁾.
- (58) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies⁽²¹⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over the destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry⁽²²⁾.

⁽¹⁶⁾ Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed on 27 October 2020).

⁽¹⁷⁾ Report – Chapter 2, p. 20-21.

⁽¹⁸⁾ Report – Chapter 3, p. 41, 73-74.

⁽¹⁹⁾ Report – Chapter 6, p. 120-121.

⁽²⁰⁾ Report – Chapter 6, p. 122-135.

⁽²¹⁾ Report – Chapter 7, p. 167-168.

⁽²²⁾ Report – Chapter 8, p. 169-170, 200-201.

- (59) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽²³⁾.
- 3.2.3.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country
- (60) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (61) In the absence of any cooperation from the PRC, the Commission has limited information concerning the ownership structure of companies active in the MSG sector in the PRC. Among the three Chinese companies indicated as major producers by the applicant, and confirmed as such by other sources based on the Commission own research, ⁽²⁴⁾ none appears to be State-owned.
- (62) However, the Commission found that one of the major exporting producers – Fufeng Group – had the support of CCP members and local public authorities and that the latter coordinated matters of interest for the company. For example, the official website of the company states the following about an official visit of local government representatives: *‘After his speech, Jiao Gangwei mentioned the coal-related problem hindering the enterprises over the past two years, and emphasized that the Zhalantun Municipal Party Committee and Government had been ensuring coordination on this matter. [...] Liu Qifan’s delegation continued to learn about the company’s social contributions, party building work, as well as MSG [...]. Liu Qifan also praised the impact of Fufeng’s launching of mass production of high-end amino acids on global prices and supported the company’s party building work. Finally, he said to his delegation: “ This company is a leading company, and there are no such good projects elsewhere. The government must serve it well.” Secretary Liu mentioned three times in a row that the government should serve the company well. Furthermore, he supported the company saying its situation reflects the determination of the senior leaders of the Inner Mongolia Autonomous Region to build a service-oriented government’.* ⁽²⁵⁾ The local government support is also visible in relation to Fufeng’s subsidiary in Heilongjiang Qiqihar, as confirmed on the Qiqihar government’s website: *‘In order to show the enterprise’s strength, gather internal strength, expand the fighting spirit and thank the local government for their strong support to the Group’s subsidiary, Qiqihar Longjiang Fufeng Biotechnology Co., Ltd., the media meeting “ new starting point, new journey, new dream ” was held in Wanda Jiahua Hotel in Qiqihar, in the afternoon of 26 July on the 20th anniversary of the founding of Fufeng group’.* ⁽²⁶⁾ The Commission found further evidence of Fufeng’s relations with the CCP, as well as the support and guidance of local authorities in the following statement from the Group’s website: *‘On 7 December 2019, Qiqihar Municipal Party Committee Deputy Secretary and Mayor Li Yugang visited the Fufeng Group headquarters. Deputy Mayor Wang Yongshi, Municipal Government Secretary-General Qi Xiaotong, Angangxi District Party Committee Deputy Secretary and Mayor Ren Guangcai, and Deputy Mayor Li Yugang Jing, etc. accompanied him on the investigation. Chairman of the Board Li Xuechun, General Manager Zhao Qiang and other leaders accompanied the visit. [...] During the discussion, Mayor Li said that key deep processing as well as its by-products are particularly important in the current industrial layout of Qiqihar City. As the world’s first amino acid manufacturer, the company has provided great help to the local corn deep processing. The chairman of the Board expressed his gratitude to Mayor Li for coming and said: “ Qiqihar City has provided the company with “incubator” services. This time it will*
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- ⁽²³⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.
- ⁽²⁴⁾ See excerpt from the analytical publication by Guosheng Securities about one of the said companies – Meihua Biological: *‘The supply side of monosodium glutamate is composed of three stakeholders and the oligopoly pattern is clear: MSG is characterized by an oligopoly structure dominated by Fufeng Group, Meihua Biological and Ningxia Eppen whose production capacity and output account for more than 90 % of the country’s figures. Thanks to industry competition and integration, together with huge capital investments, the three enterprises have developed a comprehensive industrial chain, formed a relatively huge gap between them and others, and now have a clear industry leading advantage. [...] From the perspective of MSG, Meihua, Fufeng and Eppen have reached an interdependent and pure oligopoly layout. There are only rare products for which the concentration is so high in the chemical industry subsector.’* 1 August 2019. http://pdf.dfcfw.com/pdf/H3_AP201908011342041272_1.PDF (last viewed on 19 January 2021).
- ⁽²⁵⁾ See article from the company’s website, published on 2 January 2018: Liu Qifan, member of the Standing Committee of the Party Committee and Secretary of the Disciplinary Committee of Inner Mongolia Autonomous Region, visited Northeast Fufeng Company for investigation. http://www.fufeng-group.com/news/details-236_1.html (last viewed on 19 January 2021).
- ⁽²⁶⁾ See article Fufeng’s 20th birthday press conference organised in Qiqihar city. 29 July 2019. http://www.qqhr.gov.cn/News_showNews.action?messagekey=175677 (last viewed on 19 January 2021).

not make headlines in Qiqihar City only, but also on CCTV. The company will, in accordance with the governmental economic thinking, continue to stabilize foreign trade, stabilize foreign capital, stabilize investment and stabilize expectations. It will continue to expand the fighting spirit, exploit its own advantages and steadily cooperate with the local government for a joint development".⁽²⁷⁾ Additionally, the following press statement confirms that Fufeng has been following State policy goals and ideology in its activities: 'Fufeng Group responded to President Xi Jinping's cooperation initiatives proposals to build the "New Silk Road Economic Belt" and the "21st Century Maritime Silk Road", and actively developed economic partnerships with countries along the Belt and Road.'⁽²⁸⁾

- (63) In the case of another of the three main producers of MSG – Ningxia Eppen – the Commission found that the company was implementing State policies and CCP ideology in its activities, as stated by the Ningxia Federation of Industry and Commerce: 'Since the beginning of this year, Ningxia Eppen Biological Company has meticulously organized, comprehensively deployed, deeply studied and implemented the spirit of the 18th National Congress of the Communist Party of China, taking into account the actual situation of the company and aiming at "Two strengthenings, Six goods", it strengthened the Party building, which has greatly helped the enterprise's development.'⁽²⁹⁾ The company had also benefitted from support from public authorities in establishing a national technology center. According to the Ningxia Hui Department of Industry and Information Technology, the construction of such centers has as aim to notably guide companies towards certain policy achievements: 'In order to implement the innovation-driven development strategy and guide and support enterprises to strengthen their technological innovation capacities, the Autonomous Region's Industry and Information Technology Department vigorously promotes the construction of Enterprise Technology Centers. [...] Enterprise Technology Centers have become the main actors of technological innovation in our Region and provide strong effective technological support for the high-quality development of industry in our Region. [...] Ningxia Eppen Company's Enterprise Technology Center was established in 2006 and was recognized as a national level enterprise technology center in 2011. The Technology Center ensure leadership over the industry's progression through continuous innovation and has achieved significant results.'⁽³⁰⁾
- (64) With respect to the providers of inputs for the production of MSG, as submitted by the applicant and confirmed by other sources⁽³¹⁾, the main raw material in the manufacturing of MSG in the PRC is usually corn starch, representing a substantial part of the production costs. As found by the Commission, at least one major producer of corn starch – Cofco Biotech – is an SOE supervised by the State-owned Assets Supervision and Administration Commission (SASAC)⁽³²⁾. State authorities are also shareholders, directly or indirectly, of several other major corn starch producers. As a notable example, in the case of Zhucheng Xingmao Corn Developing Co. Ltd – the leading corn starch producer (13,29 % of the market)⁽³³⁾ – 74 % of shares are held by Zhucheng Foreign Trade Corp., which is in turn owned in 26,54 % by Zhucheng City.⁽³⁴⁾

⁽²⁷⁾ See article Qiqihar Mayor Li Yugang visited Fufeng Group's headquarters for investigation. 11 December 2019. http://en.fufeng-group.cn/news/details-260_1.html (last viewed on 19 January 2021).

⁽²⁸⁾ See article from Dongfang Financial News: *Strengthen the leadership on industry, focus on poverty alleviation as a core, secure leading positions; 20 years of Fufeng: growth is coming to light*. 19 August 2019. <http://www.jinxingwenshi.com/caijing/shh/201908195018.html> (last viewed on 21 January 2021).

⁽²⁹⁾ See article about Ningxia Eppen Biotech of 20 August 2013: http://nxgsl.com/hyzl/hyfc/201308/t20130820_1163706.html (last viewed on 21 January 2021).

⁽³⁰⁾ See the official website of the Ningxia Hui Department of Industry and Information Technology: *Results of the Ningxia Eppen Biotech's Enterprise Technology Center*. 23 November 2020. <https://gxt.nx.gov.cn/info/1004/8250.htm> (last viewed on 26 January 2021).

⁽³¹⁾ 'The main costs of MSG are corn and coal. Therefore, companies that have seized the opportunity of corn and coal low prices already enjoy a comparative advantage as regards cost' – from the article *2018-2022 Forecast and Analysis of the MSG industry development prospects*. China Investment Consulting Network, 5 May 2018. <http://www.ocn.com.cn/touzi/chanye/201806/ypxwt05100100-2.shtml> (last viewed on 25 January 2021).

⁽³²⁾ See SASAC website: <http://www.sasac.gov.cn/n2588035/n2641579/n2641645/index.html> (last viewed on 22 January 2021).

⁽³³⁾ See data from the China Starch Industry Association, presented in the website: <https://www.ershicimi.com/p/a14ff87430b1ea50d458d1347123cba5> (last viewed on 22 January 2021)

⁽³⁴⁾ See: <https://www.qcc.com/firm/d8b3787389e66016cbede3e1dea817bf.html> (last viewed on 22 January 2021).

- (65) As submitted by the applicant, the production of MSG consists in a chemical process involving the use of corn starch and ammonia. Therefore, producers of MSG can also be considered as active participants of the Chinese chemical sector. With regard to that sector, the Commission found that that, according to national statistics, State-owned enterprises (SOEs) represented 52 % of the total assets of chemical companies in 2015 ⁽³⁵⁾. SOEs, in particular large central ones, have traditionally played a dominant role in the PRC's chemical industry due to their oligopoly position in upstream/feedstock, easy access to government-allocated resources (funds, loans, land etc.) and strong influence in government decision-making.
- (66) With respect to the above, the GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned or State-controlled enterprises. The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by companies (in particular State-owned or State-controlled ones), but it also claims its rights to participate in their operational decision making. This is typically done through rotation of cadres between government authorities and these companies, through presence of party members in the companies' executive bodies and of 'party cells' in the companies' structures (see also Section 3.2.3.4), as well as through shaping the corporate structure of the sector ⁽³⁶⁾. In the case of State-owned or State-controlled enterprises, the latter enjoy in exchange, a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ⁽³⁷⁾. The elements that point to the existence of government control over enterprises in the MSG value chain, and the chemical sector at large, are further developed in Section 3.2.3.4 below.
- (67) With the significant level of government intervention in chemical value chains in the PRC, State ownership and control of certain leading corn starch producing enterprises, and the fact that – as found by the Commission – certain leading MSG producers are subject to the guidance of the State, rely on its support and, in certain cases, implement the CCP's ideology, even privately owned producers of the product under review are prevented from operating under market conditions. Both public and privately owned enterprises active in the production of MSG and of the inputs used in the manufacturing of the latter, are also subject, directly or indirectly, to policy supervision and guidance as set out in Section 3.2.3.5 below.

3.2.3.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (68) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽³⁸⁾, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽³⁹⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ⁽⁴⁰⁾. In 2017, it was reported that party cells existed

⁽³⁵⁾ Data for 2015 on the basis of the China Statistical Yearbook 2016, National Bureau of Statistics of China.

⁽³⁶⁾ Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

⁽³⁷⁾ Report – Chapter 5, p. 104-9.

⁽³⁸⁾ Report – Chapter 5, p. 100-1.

⁽³⁹⁾ Report – Chapter 2, p. 26.

⁽⁴⁰⁾ Report – Chapter 2, p. 31-2.

in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies⁽⁴¹⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of MSG and the suppliers of their inputs.

- (69) By way of example, CCP structures personally overlap with the management body in the case of a number of leading MSG producers. The Commission found that the Chairman of the Board of Fufeng Group, Li Xuechun, was appointed in 2013, for a period of five years, as member of the Linyi City People's Congress.⁽⁴²⁾ Moreover, as evidenced in recital (62), the company hosts Party-building activities, which influence its operations.
- (70) In the case of Meihua Group, another of the three major producers of MSG, five out of 12 members of the Board were stated to be CCP members in 2019⁽⁴³⁾. The Commission also found the following evidence of Meihua's Party-building activities and of the CCP's influence on the company's operations: *'On June 30th, Jilin Meihua organized and carried out a party day event dedicated to "Building a Learning Enterprise, Glowing at work" . The representative of the Baicheng Municipal Party Committee Organization Department and Jilin Meihua Party Building Instructor Wang Xingang, Baicheng Industrial Park's Party Bureau Director Guo Baoyu, Jilin Meihua Party Secretary and General Manager Zhang Jinlong, and 22 Party members attended the event. [...] In the event, Wang Xingang gave all Party members a lively party lesson focusing on "the Party's development process, on what should be done by Party branch members in newly-built enterprises, and how Party member representatives should play a leading role". Then, Wang Xingang gave the Party emblem and the "Party Constitution" to each Party member in turn. Like in a renewed Party baptism, with the Party emblem on the chest and the "Party Constitution" in the hands, a "heart-to-heart bridge" between the Party organization and Party members has been build and has effectively enhanced the sense of honour, responsibility and belonging of each Party member and cadre. But this is not only about honour, this is also about responsibility. Such a "political birthday" allows Party members to always keep in mind their identity and mission, to give full play to their pioneering and exemplary role in their future work, to unite and lead the majority of cadres and employees, work hard, be creative, dare to be the first, never give up. "I volunteer to join the Communist Party of China, support the Party's program, and abide by the Party's constitution" – under the leadership of the Party secretary Zhang Jinlong, the participating Party members raised their right fists together at the end of the event, and reviewed the Party oath in front of the bright red Party flag. This Party day event allowed all Party members to further strengthen their ideals and beliefs, strengthen their Party spirit, and clarify the direction of future work.'*⁽⁴⁴⁾
- (71) In the case of Ningxia Eppen, the third major producer of MSG, the Commission found that, the company's Chairman held the post of representative to the 12th People's Congress of the Ningxia Hui Autonomous Region, at least until July 2020.⁽⁴⁵⁾ At the same time, the Ningxia Federation of Industry and Commerce gives a clear account of the CCP's role with regard to the company's operations: *'First, regulations stipulate that the Party Committee Secretary must attend and fully listen to opinions and suggestions made during meetings in which decisions are made on major corporate matters and other important meetings; Second, as of now, the relevant person in charge of the Party Organization must attend and fully listen to opinions and suggestions made during important meetings or important decisions related to the production management and business departments. The relevant person in charge of the Party Organization shall, with a high sense of responsibility, duly communicate in due time the decisions and major work projects related to the production to the Party Members and fully involve the main stakeholders to promote them.'*⁽⁴⁶⁾
- (72) The State's presence and intervention in the financial markets (see also Section 3.2.3.8 below), as well as in the provision of raw materials and inputs further have an additional distorting effect on the market⁽⁴⁷⁾. Thus, the State presence in firms, including SOEs, in the MSG sector and other related sectors (such as the financial and input sectors) allows the GOC to interfere with respect to prices and costs.

⁽⁴¹⁾ Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed on 27 October 2020).

⁽⁴²⁾ See the Linyi People's Congress website: <http://www.lyrenda.gov.cn/view-SpecialArticles.aspx?id=1285&spid=39> (last viewed on 22 January 2021)

⁽⁴³⁾ See the company's 2019 Annual report: http://pdf.dfcfw.com/pdf/H2_AN202004151378041301_1.pdf, page 54 (last viewed on 22 January 2021).

⁽⁴⁴⁾ See the company's website: <http://www.meihuagrp.com/index.php/article/1237.html> (last viewed on 22 January 2021).

⁽⁴⁵⁾ See <https://baike.baidu.com/item/%E9%97%AB%E6%99%93%E5%B9%B3> (last viewed on 22 January 2021).

⁽⁴⁶⁾ See information on the website of the Ningxia Federation of Industry and Commerce about Ningxia Eppen Biotech of 20 August 2013: http://nxgsl.com/hyzt/hyfc/201308/t20130820_1163706.html (last viewed on 22 January 2021).

⁽⁴⁷⁾ Report – Chapters 14.1 to 14.3.

3.2.3.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (73) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being allocated to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁴⁸⁾.
- (74) The chemical industry, to which producers of MSG belong, is regarded as an important sector by the GOC. This is confirmed in the numerous plans, directives and other documents pertaining to the chemical sector, which are issued at national, regional and municipal level ⁽⁴⁹⁾.
- (75) More specifically, MSG is also subject in the PRC to specific policy documents pertaining to the deep processing of corn, the latter being one of the key inputs used in its production, through corn starch fermentation (see above, notably recital (64)). In particular, MSG production processes are covered by the provisions of the Grain and Oil Processing 13th Five-Year Plan. These aim to manage various aspects of the corn processing sector (including the MSG subsector), notably with regard to the development of the value chain, supply patterns, technology choice, production localisation, or policy support: *'Speed up the development of grain deep processing: Encourage large-scale processing enterprises to develop innovative grain and oil processing industry models, fully tap the potential value of by-products and extend the industrial chain as much as possible. Support the transfer of fine and deep processing industries such as corn processing to advantageous production areas and key logistics areas and accelerate the depletion of inventories. Develop new derived products from new types of functional starch sugars and new types of enzyme preparations, polyglutamic acid, polylysine and other bulk fermentation products' [...]* *'Corn deep processing industry: Encourage corn deep-processing enterprises to develop new efficient ways of using corn and significantly raise the conversion rate of corn deep processing. [...]* *Actively develop new functional fermented products with a high-tech content such amino acids and nucleosides, new organic acids, starch sugars, polyols, new enzyme preparations, as well as special modified starches used for food, papermaking, textiles, fine chemicals, etc. [...]* *The area covering three north-eastern provinces as well as the Huanghuaihai area and other major producing areas shall increase efforts to promote mergers and reorganization of enterprises producing corn processed starch and starch sugar, alcohol, monosodium glutamate, [...]* *Encourage the activation of idle production capacity through cooperation and joint operation.'* ⁽⁵⁰⁾
- (76) In addition, with regard to inputs, the Commission found that the corn sector is subject to intensive regulation in the PRC. The country holds large amounts of corn stockpiles allowing the government to artificially lower or raise the prices of this commodity by purchasing or selling large amounts of corn on the market. Even though China started tackling the problem of excessive corn reserves in 2016, it still holds very large stockpiles, which have a distortive effect on prices ⁽⁵¹⁾. Furthermore, the government is controlling the various aspects of the entire corn value chain, including subsidies for the production of corn ⁽⁵²⁾ and supervision of the processing operations, as confirmed in this NDRC notice: *'[a]ll local authorities shall expand the monitoring and analysis of the corn supply and demand in the*

⁽⁴⁸⁾ Report – Chapter 4, p. 41-42, 83.

⁽⁴⁹⁾ Report – Chapter 16, pp. 406-424.

⁽⁵⁰⁾ See the 13th Five-Year Plan for Grain and Oil Processing, p. 16 and 22. <http://www.gov.cn/xinwen/2017-01/03/5155835/files/5bd8566b8a254067a076ef41d38ce6b3.doc> (last viewed on 25 January 2021)

⁽⁵¹⁾ Report – Chapter 12, page 319.

⁽⁵²⁾ Information on subsidies available on the Ministry of Agriculture website: http://www.moa.gov.cn/gk/zcfg/qnhnzc/201904/t20190416_6179338.htm

relevant areas, strengthen the supervision of the building phase and post-building phase of corn deep processing projects, foster the balance of corn supply and demand and ensure national food security.’⁽⁵³⁾ Another key policy document of the government⁽⁵⁴⁾ states: ‘Focus on the three main cereals rice, wheat, and corn [...]; Explore the development of a “comprehensive process” social service system and a “comprehensive industry chain” production model; Develop and foster a production level increase over the “whole county”, as well as increase the green and good quality agricultural product supply. Relevant provinces undertaking these tasks shall be supported on the basis of arrangements included in the central government budget forecast.’

- (77) The Commission also found that investment control measures are in place in the PRC with regard to corn production: ‘[T]he filing for building corn deep processing projects shall be subject to harmonized management in accordance with the State Council Order No 673.’⁽⁵⁵⁾
- (78) State policies interfering with free market forces in the corn sector are also reflected at provincial level. As submitted by the applicant and confirmed by the Commission, Heilongjiang Province issued, in August 2017, a policy document on the management of the corn processing sector, in the form of the *Guiding Opinion on the Development Layout of Corn Deep Processing Industry in Heilongjiang Province*. The latter is addressed ‘To any city (district), county (city), people’s Government (administrative office), and all units under the direct Provincial Government’s authority’, whom should ‘ensure [its] careful implementation’. The Opinion states, in terms of market entry criteria, that ‘newly built corn deep processing projects shall be mainly located in the main corn producing areas’ and that all implementing entities should ‘(e)ncourage the construction of deep processing projects with large processing scale, long industrial chains, as well as space for product market demand; Support in particular newly built corn deep processing projects with an annual corn processing capacity of not less than 600 000 tons; and encourage newly built corn deep processing projects of over 1,2 million tons.’ The document imposes a specific vision of ‘key industry chains’: ‘Projects pertaining to the industry layout shall: primarily focus on the development and production of downstream products related to starch, alcohol and functional product ranges; extend the industry chain, optimize products’ structure, highlight the specialization of different districts and different enterprises; and implement a differentiated development of product functionalities’. For the starch products range, this translates into: ‘Primarily develop special modified starch required by industries such as food, paper, textile, and fine chemicals.’ The Opinion also stipulates rules for the geographical layout of the industrial fabric: ‘Comprehensively take into account factors such as corn production, processing, market and the continuous availability of raw materials to be processed, key guarantees, corn deep processing projects shall be mainly located in 7 areas.’ For example, in the case of one of the said areas, it instructs specifically that: ‘Longjiang, Nehe, Yi’an, Nenjiang and its surrounding Gannan, Lindian, Wudalianchi, Bei’an, Fuyu, Dorbod, Baiquan, Keshan, Tailai, Kedong and other 14 counties (cities) as well as Qiqihar City’s area can provide 8,67 million tons of corn processing volume, deploy 7 projects with a 1,2 million tons of corn deep processing capacity or 14 projects with a 600 000 tons capacity. Encourage the construction of large-scale deep processing projects over 1,2 million tons in this area’. All implementing entities are directed to re-organise the sector as follows: ‘Encourage the merger and reorganization of existing annual corn processing capacities of less than 300 000 tons to improve the market competitiveness of enterprises. As regards the idle corn deep processing capacity in the area, encourage the introduction of powerful enterprises and implement alliances of similar type of products and of upstream and downstream enterprises through mergers and acquisitions and strategic cooperation, etc. [...] Guide enterprises to strengthen marketing, increase market share, and form a number of leading enterprise groups with influence on the industry’. Additionally, in terms of policy measures, the Opinion specifically foresees State support to enterprises fulfilling given financing criteria: ‘Support the financing of enterprises on the stock market, and provide subsidies to corn deep-processing enterprises listed domestically and overseas or on the New Third Board.’⁽⁵⁶⁾

⁽⁵³⁾ See NDRC Notice 2017/627 repealing the ‘NDRC Notice on Matters Concerning the Management of Corn Deep Processing Projects’, available at: https://www.ndrc.gov.cn/fggz/cy/zcyfz/201704/t20170417_1149901.html (last viewed on 25 January 2021).

⁽⁵⁴⁾ See press release: *The Ministry of Agriculture and Rural Affairs and the Ministry of Finance released the key policies for strengthen and support agriculture in 2019*. 16 April 2019. http://www.moa.gov.cn/gk/zcfg/qnhnzc/201904/t20190416_6179338.htm (last viewed on 25 January 2021).

⁽⁵⁵⁾ See NDRC Notice 2017/627.

⁽⁵⁶⁾ See notice of General Office of the People’s Government of Heilongjiang Province of 1 August 2017. <http://ydsycl.cn/goods.php?id=1271> (last viewed on 26 January 2021).

- (79) Additionally, the Commission found that local authorities in Heilongjiang were supporting, coordinating and supervising (including by means of sanctions) the establishment and functioning of at least one industrial park engaged in corn processing activities. ⁽⁵⁷⁾
- (80) The Commission also made findings with regard to State interference in the sector of ammonia – another raw material used in the production of MSG. In the national 13th Five Year Plan (FYP) for the Petrochemical and Chemical Industry, the Chinese government has set annual targets for ammonia production by promoting ‘sets of technology and equipment ensuring a yearly production exceeding 1 million tonnes of synthetic ammonia and synthetic methanol.’ ⁽⁵⁸⁾ Such supply-side interference is further reflected in similar policies by local authorities. The Hebei Province Petrochemical 13th FYP instructs notably to ‘focus on fostering the building of the second-phase of the Cangzhou Zhengyuan 600 000 tons ammonia facility’ ⁽⁵⁹⁾. Furthermore, the industrial provinces of Chongqing and Zhejiang were found to offer preferentially lower electricity prices for the manufacturing of, notably, synthetic ammonia. ⁽⁶⁰⁾
- (81) As stated above in the footnote of recital (64), coal is usually another key input in the production process of MSG in the PRC (in relation to the provision of energy in the manufacturing process). As found by the Commission in its Report, energy prices in China are not market-based. In particular, the coal market is subject to distortions, notably as a result of subsidisation ⁽⁶¹⁾. Furthermore, the Commission found that public authorities interfere with market forces in the coal sector at provincial level, notably in Shandong Province, by means of planning documents regulating the supply, localisation and industrial patterns. One such document is the *Shandong Province’s Energy Medium and Long Term Development Plan*, released in 2016 and covering a period until 2030. The Plan’s ideological motivation to manage the market is visible notably through its guiding principle to ‘(t)horoughly implement the spirit of the 18th National Congress of the Communist Party of China and its third, fourth, fifth and sixth plenary sessions; Earnestly implement the General Secretary Xi Jinping’s series of important speeches as well as the speeches he gave while inspecting Shandong.’ It also acknowledges the centralised character of the energy market’s functioning until recently, as one of the stated Plan’s aims is to ‘promote the transformation of the fully centralised energy supply pattern towards a centralised and decentralized pattern.’ The document’s provisions aim notably at regulating the specific localisation and development patterns for the coal industry ⁽⁶²⁾. Regarding coal-generated power, the document instructs, among others, to: ‘(f)ocus on planning and building mega-kilowatt high-efficiency ultra-supercritical coal power-plants projects, and build an ecological coal-fired power-plant cluster in the Northern coastal area’ and ‘plan the construction of an integrated coal-electricity

⁽⁵⁷⁾ ‘Within three years, the Heilongjiang Province, Jixi City, Mishan National Rural Industry Integration Development and Demonstration Park was set up as a Park with distinctive industry characteristics, a high degree of concentration, advanced facilities and equipment, green production methods, obvious economic benefits and a strong impact. [...] Organizational measures: Mishan City set up a small leading group composed of the Secretary of the Municipal Party Committee and the Mayor as the group leaders, the Deputy Secretary of the Municipal Party Committee and the Deputy Mayor as the Deputy Leaders, and the main leaders of various Departments. The group is in charge of promoting the demonstration park construction work, of coordinating and solving the problems encountered during the Park’s construction in due time and of ensuring the smooth progress of the demonstration park construction. At the same time, the demonstration park construction shall undergo a performance appraisal, covering the department’s key promotion work, incentives and advancement, as well as the strict reward and punishment system. As regards departments and entities providing a weak implementation of the project, poor thinking and slow promotion work, they shall undergo supervision. [...] Strengthen policy support: In 2017, Mishan City issued investment promotion support policies, actively carried out tax policy support for relevant enterprises, such as “three exemptions, three reductions” and tariff exemption, and introduced and implemented relevant national support policies regarding taxation, land use, hydropower financing, etc., hydropower prices for agricultural use and preferential supply of new construction land. Mishan City has purchased and reserved 157 hectares of land, and still has 81 hectares of land that can be used for the construction of demonstration parks.’ Excerpt from the NDRC website: *Experience and Practice of the National Rural Industry Integration Development and Demonstration Park (Heilongjiang) – Jixi Mishan Demonstration Park (Part 1)*. 26 July 2019. https://www.ndrc.gov.cn/fggz/nyncj/njxx/201907/t20190726_1144182.html (last viewed on 25 January 2021).

⁽⁵⁸⁾ Report – Chapter 16, p. 411.

⁽⁵⁹⁾ Report – Chapter 4, p. 69.

⁽⁶⁰⁾ Report – Chapter 10, p. 223.

⁽⁶¹⁾ Report – Chapter 10.

⁽⁶²⁾ ‘Rely on coal “backbone enterprises” to form a “1 + 5” coal development pattern: “1” being a coal-producing area in the west of Luxi: In accordance with the principle of “withdrawing from the Eastern areas, shrinking in the Central areas, stabilizing in the Western areas and keeping reserves in the Northern areas”, shrink and close Longkou, Zibo, Linyi, Jinan and other outdated mining areas with depleted resources, reduce mining volumes in Yanzhou, Jining, Zaozeng, Feicheng, Xinwen, Laiwu and other mining areas, keep Juye’s coal production basically stable and implement strategic reserves and strict control of development and construction in coal fields and areas with concentrated and unexploited coal resources located along the northern part of the Yellow River. “5” means to steadily promote the construction of overseas coal bases in addition to the five main areas that are: Ning (Inner Mongolia), Shanxi, Guizhou (Yunnan), Xinjiang and Australia and improve their development level.’

development base in Southwest Shandong. In the frame of the document, a specific *Coal Transformation and Development Action Plan* instructs to pursue the following industrial development and construction patterns, without regard to the free play of market forces and free corporate decision-making: *'Orderly digest and transfer the Province's excessive production capacity and labour force; Continue to improve and strengthen the foundations of the two large enterprise groups Shandong Energy and Yankuang; Accelerate and promote the merger and reorganization of local coal mining enterprises, improve the industry's concentration level, foster the transformation of the development pattern from a pattern based on quantity and speed towards a pattern based on quality and benefit. [...] Focus on the construction of coal-power integrated projects outside the province in Inner Mongolia, Shaanxi, Xinjiang, etc.'* ⁽⁶³⁾

- (82) This involvement of the government and local authorities across the entire MSG value chain has, at least potentially, a distortive effect on prices.
- (83) The GOC steers the development of the MSG sector in accordance with a broad range of tools, for example by providing State subsidies. The 2019 Annual report of the exporting producer Meihua confirms that the company received in 2018 at least RMB 130 million of government subsidies ⁽⁶⁴⁾. In the case of Ningxia Eppen, the company's 2018 Audit report showcases governmental subsidies of RMB 62,3 million received in 2017 ⁽⁶⁵⁾. Moreover, that year, Ningxia Eppen appears to have received an allocation of RMB 200 000 to establish a Party-building demonstration site ⁽⁶⁶⁾.
- (84) In addition, the Commission found that the PRC has started applying in recent years a VAT reduction of 13 % on exports of MSG, which currently results in a full VAT exemption on these exports. This also results in a cost incentive for Chinese operators in the MSG market ⁽⁶⁷⁾.
- (85) Through these and other means, the MSG sector and sectors producing raw materials used to manufacture MSG are subject to governmental intervention, with the GOC directing and controlling virtually every aspect in the development and functioning of the MSG value chain.
- (86) In sum, the GOC has measures in place to induce operators to comply with public policy objectives, including the producers of MSG and of the inputs used in the manufacturing of MSG. Such measures impede market forces from operating freely.

3.2.3.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (87) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁶⁸⁾.

⁽⁶³⁾ See <http://www.energynews.com.cn/uploadfile/2016/1220/20161220020713472.pdf> (last viewed on 27 January 2021).

⁽⁶⁴⁾ See the company's 2019 annual report: http://pdf.dfcfw.com/pdf/H2_AN202004151378041301_1.pdf, p. 167 (last viewed on 26 January 2021).

⁽⁶⁵⁾ See http://pdf.dfcfw.com/pdf/H2_AN201905051326655801_1.pdf, p. 70 (last viewed on 26 January 2021).

⁽⁶⁶⁾ *Ibid.*, p. 68.

⁽⁶⁷⁾ See the websites http://transcustoms.com/China_HS_Code/China_Tariff.asp?HS_Code=2922422000 and <http://www.hlbrdaily.com.cn/news/3/html/286480.html> (last viewed on 26 January 2021).

⁽⁶⁸⁾ Report – Chapter 6, p. 138-149.

- (88) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ⁽⁶⁹⁾. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁷⁰⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁷¹⁾.
- (89) Much like other sectors in the Chinese economy, the producers of MSG are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies are also subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission preliminarily concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the MSG sector and the sectors manufacturing the raw materials used to produce the product under review.
- (90) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the chemical and corn processing value chains, including with respect to the product under review.

3.2.3.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (91) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ⁽⁷²⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ⁽⁷³⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ⁽⁷⁴⁾. Those findings lead to the distortion of wage costs in the PRC.
- (92) No evidence was submitted to the effect that companies producing MSG or related inputs would not be subject to the Chinese labour law system described. The MSG sector is thus affected by the distortions of wage costs both directly (when the product under review is manufactured) as well as indirectly (when MSG producers have access to capital or inputs from companies subject to the same labour system in the PRC).

3.2.3.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State

- (93) Access to capital for corporate actors in the PRC is subject to various distortions.

⁽⁶⁹⁾ Report – Chapter 9, p. 216.

⁽⁷⁰⁾ Report – Chapter 9, p. 213-215.

⁽⁷¹⁾ Report – Chapter 9, p. 209-211.

⁽⁷²⁾ Report – Chapter 13, p. 332-337.

⁽⁷³⁾ Report – Chapter 13, p. 336.

⁽⁷⁴⁾ Report – Chapter 13, p. 337-341.

- (94) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ⁽⁷⁵⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ⁽⁷⁶⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ⁽⁷⁷⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁷⁸⁾.
- (95) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (96) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽⁷⁹⁾.
- (97) These issues are compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁸⁰⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (98) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (99) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government-induced distortions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (100) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (101) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.
- (102) No evidence was submitted to the effect that the MSG sector would be exempted from the above-described government intervention in the financial system. The Commission has also established that leading producers of MSG benefited from government subsidies (see recital (83)). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

⁽⁷⁵⁾ Report – Chapter 6, p. 114-117.

⁽⁷⁶⁾ Report – Chapter 6, p. 119.

⁽⁷⁷⁾ Report – Chapter 6, p. 120.

⁽⁷⁸⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁷⁹⁾ See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparuso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jianguan, October 2016, WP/16/203.

⁽⁸⁰⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

3.2.3.9. Systemic nature of the distortions described

- (103) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.3.2 to 3.2.3.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.3.6 to 3.2.3.8 above and in Part B of the Report.
- (104) The Commission recalls that in order to produce MSG a range of inputs is needed. In that respect, the PRC is one of the major producers of corn – the key raw material in the MSG production process (see recital (64)). When the producers of MSG purchase/contract these inputs in the PRC, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (105) As a consequence, not only the domestic sales prices of MSG are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.3.10. Conclusion

- (106) The analysis set out in Sections 3.2.3.2 to 3.2.3.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the MSG sector and related supply chain showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (107) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.2.4. Representative country

3.2.4.1. General remarks

- (108) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁸¹⁾,
 - Production of the product under review in that country,

⁽⁸¹⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

- Availability of relevant public data in the representative country,
- Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

(109) As explained in recitals (40) and (41), the Commission issued two notes for the file available to interested parties on the sources for the determination of the normal value, filed on 21 February 2020 ('first note on production factors') and 8 April 2020 ('the second note on production factors') respectively. In the latter note, the Commission informed interested parties of its conclusion that Thailand was an appropriate representative country in the present case if the application of the methodology under Article 2(6a) of the basic Regulation would be confirmed.

3.2.4.2. Production of the product under investigation in the representative country and level of economic development similar to the PRC

(110) In the first note on production factors, the Commission indicated that, among the countries with a similar level of economic development as the PRC according to the World Bank, i.e. those classified by the World Bank as 'upper-middle income' countries on a gross national income basis, production of the product under review was known to take place in Argentina, Brazil, Fiji, Iran, Jamaica, Malaysia, Mauritius, Mexico, Peru, South Africa, Thailand and Turkey. No comments were received concerning the level of economic development and production of the product under investigation in the potential representative countries following that note.

3.2.4.3. Readily available data in the representative country

(111) The Commission could identify MSG producing companies whose financial data were readily available and who thus could be considered suitable for the purpose of Article 2(6a)(a) of the basic Regulation only in two of the countries identified by the Commission as potential representative countries, i.e. in Thailand and Malaysia.

(112) However, as stated in the second note on production factors, only one company producing MSG was identified in Malaysia: Ajinomoto Malaysia Bhd, which produced other food products and additives as well. In Thailand, five companies were identified, namely Ajinomoto Co., (Thailand) Ltd., Thai Fermentation Industry Co Ltd. (Racha Churos), Thai Churos, Thai Foods International Co. Ltd. and KT MSG. All of these companies were producing MSG and other food products or additives. However, two of them, Thai Fermentation Industry Co Ltd. (Racha Churos) and Thai Churos, appeared to produce mainly MSG and a limited range of other products. On that basis, the Commission concluded that the publicly available financial data found in Thailand would be representative and accurate for the assessment of an undistorted and reasonable amount for SG&A for this investigation.

(113) The Commission carefully analysed all relevant data available in the file for the factors of production in Thailand and noted the following:

- The Commission analysed the import statistics of all factors of production listed in the first note on production factors, as updated by the second note on production factors, and concluded that there were imports of all the factors of production necessary for the production of the product under investigation in the RIP.
- Energy statistics (industrial prices for electricity) for the RIP were readily available in the form of data provided by the Provincial Electricity Authority and published by the Thailand Board of Investment ⁽⁸²⁾.
- The source for labour cost are the statistics available on the website of the International Labour Organisation ('ILO') on average monthly wages in the manufacturing sector and weekly hours worked in Thailand ⁽⁸³⁾.

⁽⁸²⁾ https://www.boi.go.th/index.php?page=utility_costs

⁽⁸³⁾ https://ilostat.ilo.org/?_afLoop=767707374397500&_afWindowMode=0&_afWindowId=null

- (114) According to Article 2(6a)(a) of the basic Regulation, the constructed normal value shall include an undistorted and reasonable amount for SG&A and for profits. In addition, a value for manufacturing overheads needs to be established to cover costs not included in the factors of production. As aforementioned in the recital (112), the Commission concluded that five companies in Thailand, namely Ajinomoto Co. (Thailand) Ltd.; Thai Fermentation Industry Co Ltd. (Racha Churos); Thai Churos; Thai Foods International Co. Ltd. and KT MSG had readily available financial statements that could be used as a proxy to determine an undistorted and reasonable amount for SG&A and profits.
- (115) Having established that Thailand was an appropriate representative country on the basis of these elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

3.2.4.4. Conclusion on representative country

- (116) In view of the above analysis, Thailand met all the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country. In particular, Thailand has a substantial production of the product under investigation and a complete set of data readily available for all factors of production, SG&A and profit.

3.2.5. Sources used to establish undistorted costs and benchmarks

- (117) In the second note on production factors, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it intended to use GTA ⁽⁸⁴⁾ to establish the undistorted cost of all the raw materials included in the factors of production in the representative country and the statistics of the ILO and national statistics to establish the undistorted costs of labour in the representative country. The Commission also stated that it intended use for the electricity costs the rates applicable by the Provincial Electricity Authority of Thailand. For the water cost, the Commission intended to use tariffs applicable by the Thailand's Metropolitan Waterworks Authority. Also, the financial data from five companies Ajinomoto Co. (Thailand) Ltd.; Thai Fermentation Industry Co Ltd. (Racha Churos); Thai Churos; Thai Foods International Co. Ltd. and KT MSG, would be used to establish SG&A costs and profits.

3.2.6. Factors of production

- (118) In order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation the Commission analysed all the available data for the factors of production and decided to use the following values:

Table 1

Factors of production of MSG

Factor of production	Commodity code	Unit of measurement	Undistorted value
Raw materials			
Corn	1005 90 90 00 2	KG	1,59 CNY/kg
Enzymes	3507	KG	73,81 CNY/kg
Anhydrous ammonia	2814 10	KG	1,97 CNY/kg
Oxygen-function amino-compounds	2922 49	KG	57,89 CNY/kg
Sulphuric acid	2807 0000 10 2	KG	0,49 CNY/kg
Phosphoric Acid	2809 20 32	KG	7,89 CNY/kg

⁽⁸⁴⁾ <http://www.gtis.com/gta/secure/default.cfm>

Sodium hydroxide in aqueous solution	2815 12	KG	2,30 CNY/kg
Sodium bicarbonate	2836 30	KG	3,20 CNY/kg
Disodium phosphate	2835 22 00	KG	7,4 CNY/kg
Activated Carbon	3802 10 00 00 0	KG	25,75 CNY/kg
Liquid oxygen	2804 40	KG	1,06 CNY/kg
Energy/Consumable Items			
Oil	2710 19	L	3,35 CNY/L
Rice Husk	1213 00	KG	3,91 CNY/kg
Electricity	Provincial Electricity Authority of Thailand	KWH	0,71 CNY/kWh
Labour			
Direct Labour	International Labour Organization – ILOSTAT	HRS	17,13 CNY/hour
By product/waste			
Liquid Fertilizer	3105	KG	2,64 (neg.) CNY/kg

(119) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. To establish this amount use was made of the data provided in the request, notably the data from Ajinomoto's Thai KKP plant. The methodology is duly explained in recitals (127) and (128).

3.2.6.1. Raw materials

(120) The cost structure of MSG is mainly determined by the costs of the raw materials, especially the sugar source and various chemicals (mainly carbonates) as well as energy.

(121) In order to establish the undistorted price of raw materials, the Commission relied on import prices to the representative country as reported in GTA to which import duties were added. In order to establish the normal value according to the Commission's methodology, domestic transport costs should normally be added to these import prices. However, considering the finding in recital (133), that no domestic transport costs were available due to the non-cooperation of the exporter/producers in the PRC, as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport were unnecessary, as such adjustments would only result in increasing the normal value and hence of the dumping margin.

(122) The import price of each factor of production in the representative country was determined as a weighted average of the unit import prices of that factor of production from all third countries excluding the PRC and countries that were not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council⁽⁸⁵⁾. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (106) that it is not appropriate to use domestic prices and costs in the PRC due to the existence

⁽⁸⁵⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there was no evidence available showing that the same distortions did not equally affect products intended for export, the Commission considered that the same distortions affected export prices.

3.2.6.2. Labour

(123) The ILO publishes detailed information on wages in different economic sectors in Thailand. The Commission used the latest available ILO statistics on monthly wages in the manufacturing sector and weekly hours worked in Thailand for the review investigation period ⁽⁸⁶⁾.

3.2.6.3. Electricity

(124) The price of electricity for companies (industrial users) in Thailand is published by the Thailand Board of Investment. The Commission used the rates applicable to Large General Service companies, as applied by the Provincial Electricity Authority and published by the Thailand Board of Investment ⁽⁸⁷⁾.

3.2.6.4. Consumables/negligible quantities

(125) Due to the large number of factors of production, some of the raw materials that only had a negligible (i.e. less than 0,5 %) weight in the total cost of production were grouped under consumables.

(126) The Commission calculated the percentage of the consumables on the total cost of raw materials provided in the request, notably the data from Ajinomoto's Thai KKP plant, and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.

3.2.6.5. Manufacturing overhead costs, SG&A, profits and depreciation

(127) According to Article 2(6a)(a) of the basic Regulation, *'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'*. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production.

(128) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese exporting producers/producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided in the request, notably the data from Ajinomoto's Thai KKP plant, the Commission established the ratio of manufacturing overheads to the total manufacturing and labour costs. This percentage was applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads.

(129) For establishing an undistorted and reasonable amount for SG&A and profit the Commission relied on the financial data from five companies in the representative country Thailand mentioned in the recital (117); namely Ajinomoto Co. (Thailand) Ltd.; Thai Fermentation Industry Co Ltd. (Racha Churos); Thai Churos; Thai Foods International Co. Ltd. and KT MSG as extracted from the databases of Orbis Bureau van Dijk ⁽⁸⁸⁾ ('Orbis'). As indicated in the second note on production factors, the data of Ajinomoto Co. (Thailand) Ltd. covered the financial year April 2018 to March 2019. The latest financial data for the other four companies covered the financial year January to December 2018. The turnover of Ajinomoto Co. (Thailand) Ltd. represented more than 80 % of the total turnover of the five companies, thus the data that partially covers the RIP has a very significant weight on the average SG&A and profit used in this investigation. The inclusion of the data of other companies, whilst covering the period just before the RIP, was considered representative in the absence of evidence to the contrary. No comments on this approach as outlined in the second note on production factors were received. The Commission believed this approach to be

⁽⁸⁶⁾ https://ilostat.ilo.org/?_afLoop=767707374397500&_afWindowMode=0&_afWindowId=null

⁽⁸⁷⁾ https://www.boi.go.th/index.php?page=utility_costs

⁽⁸⁸⁾ <https://orbis4.bvdinfo.com/version-201866/orbis/Companies>

appropriate in these circumstances, considering that the SG&A and profit of Ajinomoto Co. (Thailand) Ltd. (both 16 %) was in line with the average used and listed in recital (132) reflecting the data of the other companies for which data was available until the end of 2018. In any event, either data set would have demonstrated a high dumping margin and, considering that the investigation concerned is an expiry review, there is no need to establish a precise dumping margin. In January 2021, the Commission consulted the Dun & Bradstreet ('D&B')⁽⁸⁹⁾ database to check whether the financial data of all five companies was updated. The only update found was for Ajinomoto Co. (Thailand) Ltd. for period April 2019 to March 2020, however the data set was incomplete as it did not include the net profit. The original set of data that was disclosed in the second note on production factors was therefore used.

3.2.7. Calculation

(130) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. Given the non-cooperation of the exporting producers/producers in China and the fact that therefore no information on the product types sold on the domestic market was available normal value was not established on a per-type basis.

(131) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the Chinese exporting producers/producers, the Commission relied on the information provided by the applicant in the request based on the cost structure and relevant technical production ratios of its production plants adapted to the main sugar sources (corn starch) used in China on the usage of each factor (materials and labour) for the production of MSG. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country Thailand.

(132) The Commission then applied the ratio of manufacturing overheads established as explained in recital (128) to the undistorted manufacturing costs. For SG&A and profit, the Commission used the weighted average of SG&A and profit recorded in the publicly available financial statements of the five identified producers of MSG in Thailand as explained in recital (129). Thus, the Commission added the following items to the undistorted cost of manufacturing:

- Manufacturing overheads which accounted for [5 – 10 %] of the total manufacturing costs as explained in recital (128),
- SG&A of 16 %, applied to the sum of costs of manufacturing and manufacturing overheads, and
- A profit of 18 %, applied to the sum of costs of manufacturing and manufacturing overheads.

3.2.8. Export price

(133) Because of the non-cooperation by the exporting producers/producers in the PRC, export prices to the Union were established on the basis of the facts available in accordance with Article 18 of the basic Regulation. The Commission established the export price based on the available statistics, namely the Comext database (Eurostat). Since the prices in Comext are recorded at Cost, Insurance, and Freight ('CIF') level, the ex-works level was established based on the evidence provided in the request for expiry review for transport cost, handling, ocean freight and insurance.

3.2.9. Comparison and dumping margin

(134) The Commission compared the constructed normal value in accordance with Article 2(6a)(a) of the basic Regulation with the export price as established above. On that basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price from the Comext database, duty unpaid, was 112,8 %.

3.2.10. Conclusion

(135) The Commission therefore concluded that dumping from the PRC continued during the review investigation period.

⁽⁸⁹⁾ <https://ec.altares.eu/>

3.3. Indonesia

(136) For the review investigation period, the statistical data from Eurostat show that 5 535 tonnes of MSG were imported from Indonesia, representing [5 – 10]% of the market share in the Union. The Commission concluded that such volume of imports is sufficiently representative to examine whether dumping continued during the review investigation period.

3.3.1. Normal value

(137) Due to the lack of cooperation from the Indonesian exporting producers, the Commission used facts available for establishing normal value, in accordance with Article 18 of the basic Regulation. In this regard, the Commission used the information provided by the group of cooperating Indonesian producers.

(138) Normal value was thus based on the domestic sales prices provided by the group of cooperating Indonesian producers. Due to the lack of cooperation from the Indonesian exporting producers, no detailed export prices per product type were available. Consequently, it was not possible to perform a detailed ordinary course of trade test as set out in Articles 2(4) to 2(6) of the basic Regulation. The Commission established that the average domestic sales price was profitable, i.e. above the average cost of production established for the group of cooperating Indonesian producers. Therefore, normal value was based on the average domestic sales price of all domestic sales of the cooperating group of Indonesian producers.

(139) The investigation also revealed that MSG was sold in bulk and for retail. The applicant provided information that MSG in bulk (i.e. on sales in packaging sizes of 20 kg and more) represented the vast majority of the export sales to the Union, while sales on the domestic market in Indonesia were made both in bulk and for retail (sales in small consumer packages).

(140) The data submitted by the group of cooperating Indonesian producers confirmed that MSG in bulk was sold on the Indonesian domestic market at prices below the cost of production and showed that there was a consistent price difference between sales in bulk and for retail.

(141) Therefore, for the sake of completeness and to ensure a fair comparison between normal value and the export price, the Commission also calculated an alternative normal value based on domestic sales in bulk only that could be compared to the export sales prices predominantly in bulk. As above, sales prices of MSG in bulk were based on the information provided by the group of cooperating Indonesian producers. Since domestic sales in bulk were made below the average cost of production, the Commission constructed normal value following Article 2(3) and (6) of the basic Regulation by adding the weighted average SG&A expenses and profit incurred by the group of cooperating Indonesian producers on all domestic sales of MSG (bulk and retail), during the review investigation period. In the absence of any other information available, it was considered the most appropriate source of information and reasonable.

3.3.2. Export price

(142) In the absence of cooperation of Indonesian exporting producers, the export price was determined based on Comext (Eurostat) data, in accordance with Article 18 of the basic Regulation. Since the prices in Comext are recorded at CIF level and the group of cooperating Indonesian producers did not export to the Union, the ex-works level was established based on the evidence provided in the request for expiry review for transport and insurance costs from Indonesia to the Union border.

3.3.3. Comparison and dumping margin

(143) The Commission compared the normal value under the two different scenarios described above with the export price as established above. On that basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was:

— 87,03 %, when calculated on the basis of all domestic sales of MSG in Indonesia as described in recital (138),

— 44,26 %, when calculated on the basis of constructed normal value as described in recital (141).

3.3.4. Conclusion

(144) The Commission therefore concluded that dumping from Indonesia continued during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING

4.1. PRC

(145) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping should the measures be repealed with regard to imports from the PRC. As a consequence of the non-cooperation of exporting producers/producers in the PRC, the Commission based its assessment on the facts available in accordance with Article 18 of the basic Regulation, namely on findings of the previous expiry review mentioned in recital (2), on information provided in the request for review, publicly available information, Comext (Eurostat) and GTA. The following elements were analysed: the production capacity and spare capacity in the PRC, export prices to third country markets, the attractiveness of the Union market and circumvention practices.

4.1.1. Production capacity and spare capacity in the PRC

(146) Due to the absence of cooperation, the Commission had to base its assessment on the facts available in accordance with Article 18 of the basic Regulation, notably on the information provided in the request and the findings of the previous expiry review, as well as other public sources as detailed in recital (149).

(147) Production capacity of MSG in China has increased continuously since 2015, according to the information provided by the applicant. Since 2013, due to strengthened environmental protection laws, smaller MSG producers in China moved out of the MSG market, while larger producers expanded their facilities and increased production capacity by [10-30] %, reaching [3 500 000-4 000 000] tonnes, between 2016 and 2018. During the same period, total spare capacity increased by [100-130] %. As of 2018, unused capacity among the active MSG producers in the PRC was estimated to be [twelve to fifteen] times the size of Union consumption in the review investigation period.

(148) Furthermore, several publicly available articles ⁽⁹⁰⁾ based on market reports, confirm the rapid increase in Chinese production volumes. Based on this publicly available information several leading MSG producers in the PRC increased their capacity since 2015.

(149) Other publicly available information ⁽⁹¹⁾ indicated that Fufeng Group, one of the leading MSG producers in the PRC and the main exporter to the Union according to the applicant, increased its production capacity by 41 %, from 940 000 tonnes in 2015 to 1 330 000 tonnes in 2019. At the same time, its capacity utilisation dropped to 80 %. This means that a single Chinese producer's spare capacity in 2019 amounted at 266 000 tonnes, that is more than [two to four] times the total Union consumption during the same period.

(150) Considering that there are several other MSG producers in the PRC with comparable size as Fufeng Group above, it is reasonable to conclude that there is a significant overcapacity in the PRC.

⁽⁹⁰⁾ <https://www.prnewswire.com/news-releases/global-monosodium-glutamate-msg-market-2019-2024-key-players-growth-price-demands-and-forecasts—reportsnreports-300795733.html>

<https://ihsmarkit.com/products/monosodium-glutamate-chemical-economics-handbook.html#:~:text=Currently%2C%20China%20is%20the%20world's,world's%20largest%20exporter%20of%20MSG>

<https://ihsmarkit.com/products/monosodium-glutamate-chemical-economics-handbook.html#:~:text=Currently%2C%20China%20is%20the%20world's,world's%20largest%20exporter%20of%20MSG>

⁽⁹¹⁾ <http://en.fufeng-group.cn/investor/>

4.1.2. Attractiveness of the Union market, export prices to third country markets and circumvention

- (151) The Commission examined whether it is likely that Chinese exporting producers would increase their export sales to the Union at dumped prices should measures be allowed to lapse. Therefore, the Commission examined the price levels of the Chinese exporting producers to the Union as compared to other third country markets, in order to determine whether the Union market was attractive in terms of price levels.
- (152) In the absence of cooperation, the Commission used Eurostat and GTA statistics. It was found that the average Chinese export price to the Union was only marginally lower than the overall average Chinese export price to other third country markets. Given that, as explained in recital (221) Chinese import prices to the EU (without anti-dumping duty) significantly undercut the Union industry prices during the RIP, it is highly likely that, should the measures be allowed to lapse, the Union market would be more attractive for Chinese exporters than other third country markets. This is because, without duties, the Chinese exporters could export to the Union at prices higher than those to other third country markets but still below the Union industry's prices.
- (153) It was also found that, despite the anti-dumping measures in force, imports from China remained relatively stable both in terms of volume and market share, representing [4 – 7 %] market share during the review investigation period (out of which more than half were under inward processing see Section 5.3.2 below). In addition, as explained in recitals (8) and (9) Chinese exporting producers have been found to circumvent the anti-dumping measure in force by exporting a slightly modified product (MSG in mixture and solution). The circumvention practices show the interest of the Chinese exporting producers in accessing the Union market without restrictions and thus the attractiveness of the Union market for Chinese exports.
- (154) Based on the significant overcapacity in the PRC and the attractiveness of the Union market for Chinese exporting producers, as evidenced by the third country export prices and circumvention practices, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of dumped exports.

4.1.3. Conclusion on the likelihood of continuation of dumping

- (155) In view of its findings on the continuation of dumping during the RIP and on the likely development of exports should the measures lapse as explained in recital (154), the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures on imports from the PRC would result in the continuation of dumping.

4.2. Indonesia

- (156) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated in accordance with Article 11(2) of the basic Regulation the likelihood of continuation of dumping, should the measures be repealed. As a consequence of the non-cooperation of exporting producers in Indonesia, the Commission based its assessment on the facts available in accordance with Article 18 of the basic Regulation, notably on the information provided in the request and statistics available, namely those from Eurostat and GTA. The following elements were analysed: the production capacity and spare capacity in Indonesia, the domestic market situation in Indonesia, the export prices to other third country markets and the attractiveness of the Union market.

4.2.1. Production capacity and spare capacity in Indonesia

- (157) Given the large non-cooperation of the Indonesian exporting producers, production capacity and spare capacity in Indonesia were established on the basis of facts available and in particular the information provided by the applicant, in accordance with Article 18 of the basic Regulation.

- (158) The production capacity in Indonesia substantially exceeded the production volumes. According to the request, the production capacity of MSG amounted to around 240 thousand tonnes between July 2018 – June 2019, while the production volumes amounted to around 200 thousand tonnes in the same period. Therefore, the capacity utilisation reached around 85 % amounting to an estimated spare capacity of around 35 thousand tonnes, representing [zero to two] times the size of the total Union consumption during the review investigation period.
- (159) Based on the above, the Commission concluded that the Indonesian exporting producers have significant spare capacity, which they could use to produce MSG for export to the Union market if measures were allowed to lapse.

4.2.2. Market situation in Indonesia

- (160) According to GTA statistics exports of MSG from China to Indonesia increased by 71 % between 2016 and 2019, from 26 668 tonnes to 45 498 tonnes in 2019. During the same period, MSG prices from China to Indonesia decreased by over 8 %, from 949 EUR/tonne in 2016 to 874 EUR/tonne in 2019.
- (161) The rising levels of low-priced imports from China made it increasingly difficult for Indonesian producers to sell MSG on their domestic market and/or to cover their costs of production through domestic sales. During the investigation, this could also be observed at the level of the group of cooperating Indonesian producers that were selling MSG in bulk below cost, as explained in recital (139). Such situation is strengthening the Indonesian producers' incentive to increase their export sales to third countries, including the Union, to absorb at least the fixed cost of production.

4.2.3. Attractiveness of the Union market and export prices to third country markets

- (162) The investigation found that Indonesian market share remained representative during the whole period considered and it was [5 – 9] % during the review investigation period, despite the anti-dumping measures in force. This shows clearly the attractiveness of the Union market to the Indonesian MSG producers.
- (163) The Commission examined whether it is likely that Indonesian exporting producers would increase its export sales to the Union at dumped prices should measures be allowed to lapse. Therefore, the Commission examined the price levels of the Indonesian exporting producers to the Union as compared to other third country markets, in order to determine whether the Union market was attractive in terms of price levels.
- (164) In the absence of cooperation from the Indonesian exporting producers, the comparison of Indonesian export prices to the Union with Indonesian export prices to other export markets during the review investigation period was based on data from GTA. On that basis, the average Indonesian FOB export sale price to the Union was slightly higher (by 1,6 %) than the overall average Indonesian export sale price to other third country markets. Although, prices were only slightly higher to the Union, the constant and still significant market share of Indonesian exports in the Union confirm that price levels to the Union were attractive. In addition, considering that FOB prices recorded in GTA do not include the anti-dumping duties (which are between 7,2 % and 28,4 % for Indonesian exporting producers) the price level to the Union would clearly be attractive for the Indonesian exporters should the duties lapse, as it would allow them to increase their export prices. Under this scenario, the Union market would generate a more lucrative price level than other third markets and therefore there would be a high incentive to increase exports to the Union.
- (165) Based on the substantial excess capacity of the Indonesian producers, the domestic market situation in Indonesia and the attractiveness of the Union market for Indonesian exporting producers, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of dumped exports.

4.2.4. Conclusion on the likelihood of continuation of dumping

(166) In view of its findings on the continuation of dumping during the RIP and on the likely development of exports should the measures lapse as established in recital (165), the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures on imports from Indonesia would result in the continuation of dumping.

5. INJURY

5.1. Definition of the Union industry and Union production

(167) The like product was manufactured by one producer in the Union during the period considered. It constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

5.2. Union consumption

(168) The Commission established the Union consumption by adding the Union industry's sales on the Union market to the imports from the PRC, Indonesia and other third countries, based on Eurostat.

(169) Union consumption developed as follows:

Table 2

Union consumption (in tonnes)

	2016	2017	2018	Review Investigation Period
Free market	[48 170 –78 448]	[49 430–80 501]	[46 745–76 127]	[45 712–74 445]
<i>Index (FY2016 = 100)</i>	100	103	97	95
Captive market	[78 – 127]	[104 – 169]	[125 – 204]	[190 – 310]
<i>Index (FY2016 = 100)</i>	100	134	161	245
Captive consumption v Free market consumption	0,16 %	0,21 %	0,27 %	0,42 %

Source: Questionnaire reply, Eurostat

(170) The Union consumption on the free market slightly increased between 2016 and 2017 before decreasing towards the end of the review investigation period. Overall, the Union consumption on the free market decreased by 5 % over the period considered.

(171) There is also a very small captive consumption in the Union representing less than 0,5 % of the consumption of the free market during the entire period considered. The captive consumption increased by 145 % over the period considered.

5.3. Imports from the countries concerned

5.3.1. Volume and market share of the imports from the countries concerned

(172) The Commission established the volume and market share of imports on the basis of Eurostat.

(173) Imports from the countries concerned and their market share developed as follows:

Table 3

Import volume (in tonnes) and market share

	2016	2017	2018	Review Investigation Period
Volume of imports from the PRC	3 604	3 643	2 223	3 485
<i>Index (FY2016 = 100)</i>	100	101	62	97
Market share	[3,7 % – 6,0 %]	[3,6 % – 5,9]	[2,3 % – 3,8 %]	[3,7 % – 6,1 %]
<i>Index (FY2016 = 100)</i>	100	99	64	102
Volume of imports from Indonesia	7 496	7 855	8 269	5 060
<i>Index (FY2016 = 100)</i>	100	105	110	68
Market share	[7,6 % – 12,4 %]	[7,8 % – 12,7 %]	[8,7 % – 14,1 %]	[5,4 % – 8,8 %]
<i>Index (FY2016 = 100)</i>	100	102	114	71

Source: Eurostat

- (174) Import volumes from the PRC were almost constant between 2016 and 2017, decreased significantly in 2018 (by 39 % as compared to 2017), and then increased by 57 % by the end of the review investigation period as compared to 2018. Overall, the import volumes from the PRC decreased by 3 % over the period considered.
- (175) The import volumes from Indonesia increased between 2016 and 2018 by 10 % before significantly decreasing by 39 % by the end of the review investigation period as compared to 2018 levels. Over the course of the period considered, the import volumes from Indonesia decreased by 32 %.
- (176) The market share of the PRC increased by 2 % during the period considered, while for Indonesia it decreased by 29 % over the same period. Nevertheless, the market share for both the PRC and Indonesia were above de minimis during the entire period considered.

5.3.2. Inward processing system

(177) MSG is imported from the PRC under the normal regime as well as under the inward processing system.

(178) The imports from the PRC under the normal regime and under inward processing system developed as follows:

Table 4

Import volume (in tonnes) from the PRC under normal regime and inward processing system

	2016	2017	2018	Review Investigation Period
Import volume from the PRC under the normal regime	1 930	1 022	872	1 125

<i>Index (FY2016 = 100)</i>	100	53	45	58
Market share	[2,0 % – 3,2 %]	[1,0 % – 1,7 %]	[0,9 % – 1,5 %]	[1,2 % – 2,0 %]
<i>Index (FY2016 = 100)</i>	100	52	47	61
Import volume from the PRC under the inward processing system	1 673	2 621	1 351	2 359
<i>Index (FY2016 = 100)</i>	100	157	81	141
Market share	[1,7 % – 2,8 %]	[2,6 % – 4,2 %]	[1,4 % – 2,3 %]	[2,5 % – 4,1 %]
<i>Index (FY2016 = 100)</i>	100	153	83	149

Source: Eurostat

- (179) 68 % of total imports from the PRC were imported via inward processing system in the review investigation period. Their volume increased by 41 % over the period considered.

5.3.3. Prices of the imports from the countries concerned and price undercutting

- (180) The Commission established the prices of imports on the basis of Eurostat.

- (181) The weighted average price of imports from the countries concerned developed as follows:

Table 5

Import prices (EUR/kg)

	2016	2017	2018	Review Investigation Period
The PRC	1,06	0,89	0,88	0,93
<i>Index (FY2016 = 100)</i>	100	85	83	88
Indonesia	1,24	1,12	1,07	1,17
<i>Index (FY2016 = 100)</i>	100	91	87	94

Source: Eurostat (without imports under inward processing)

- (182) The import price from the PRC decreased between 2016 and 2018 by 17 % before increasing by 5 % by the end of the review investigation period. Overall, the import price from the PRC decreased by 12 % over the period considered.
- (183) The import price from Indonesia followed the same trend as the import price from the PRC, decreasing between 2016 and 2018 by 13 % and then increasing by 9 % by the end of the review investigation period. Over the period considered, the import price from Indonesia decreased by 6 %.
- (184) In view of the non-cooperation of the Chinese and Indonesian exporting producers as stated in recital (24), the Commission determined the price undercutting during the review investigation period by comparing the weighted average sales price of the sole Union producer charged to unrelated customers on the Union market, adjusted to an ex-works level and the weighted average export prices from Eurostat, including the anti-dumping duty, with

appropriate adjustments for customs duties and post-importation costs. Regarding the imports from the PRC, the price of the volumes of MSG imported under the inward processing system were not taken into account as these volumes are not released in free circulation of the Union market.

(185) The result of the comparison was expressed as a percentage of the sole Union producers' turnover during the review investigation period. It showed no undercutting for both the PRC and Indonesia.

5.4. Imports from third countries other than the PRC and Indonesia

(186) The imports of MSG from third countries other than the PRC and Indonesia were mainly from Vietnam and Brazil.

(187) The volume of imports as well as the market share and price trends for imports of MSG from other third countries developed as follows:

Table 6

Imports from third countries

Country		2016	2017	2018	Review Investigation Period
Vietnam	Volume (tonnes)	3 399	1 523	1 642	2 642
	<i>Index</i> (FY2016 = 100)	100	45	48	78
	Market share	[3,5 % – 5,6 %]	[1,5 % – 2,5 %]	[1,7 % – 2,8 %]	[2,8 % – 4,6 %]
	<i>Index</i> (FY2016 = 100)	100	44	50	82
	Average price (EUR/kg)	1,32	1,34	1,24	1,31
	<i>Index</i> (FY2016 = 100)	100	101	94	99
Brazil	Volume (tonnes)	1 900	1 296	1 014	1 339
	<i>Index</i> (FY2016 = 100)	100	68	53	70
	Market share	[1,9 % – 3,1 %]	[1,3 % – 2,1 %]	[1,1 % – 1,7 %]	[1,4 % – 2,3 %]
	<i>Index</i> (FY2016 = 100)	100	67	55	74
	Average price (EUR/kg)	1,20	1,20	1,21	1,22
	<i>Index</i> (FY2016 = 100)	100	100	101	102
Other third countries	Volume (tonnes)	344	345	386	365
	<i>Index</i> (FY2016 = 100)	100	100	112	106

	Market share	[0,3 % – 0,6 %]	[0,3 % – 0,6 %]	[0,4 % – 0,7 %]	[0,4 % – 0,6 %]
	<i>Index</i> (FY2016 = 100)	100	98	116	112
	Average price (EUR/kg)	2,49	2,83	2,39	2,65
	<i>Index</i> (FY2016 = 100)	100	114	96	107
Total of all third countries except the countries concerned	Volume (tonnes)	5 642	3 164	3 041	4 346
	<i>Index</i> (FY2016 = 100)	100	56	54	77
	Market share	[5,7 % – 9,3 %]	[3,1 % – 5,1 %]	[3,2 % – 5,2 %]	[4,7 % – 7,6 %]
	<i>Index</i> (FY2016 = 100)	100	55	56	81
	Average price (EUR/kg)	1,35	1,44	1,38	1,40
	<i>Index</i> (FY2016 = 100)	100	107	102	103

Source: Eurostat

(188) Import volumes from other third countries overall decreased from 5 642 400 kg in 2016 to 4 345 700 kg in the review investigation period, that is a decrease of 23 % over the period considered. The corresponding market share decreased by 19 % in the same period. Overall, the prices of third countries' imports increased by 3 % during the period considered and are considerably higher than the prices of imports from the countries concerned.

5.5. Economic situation of the Union industry

5.5.1. General remarks

(189) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

5.5.2. Production, production capacity and capacity utilisation

(190) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 7

Production, production capacity and capacity utilisation

	2016	2017	2018	Review Investigation Period
Production volume (tonnes)	[47 400–77 195]	[50 105–81 599]	[48 624–79 188]	[50 108–81 605]
<i>Index</i> (FY2016 = 100)	100	106	103	106
Production capacity (tonnes)	[61 600–100 320]	[61 600–100 320]	[61 600–100 320]	[61 600–100 320]

<i>Index (FY2016 = 100)</i>	100	100	100	100
Capacity utilisation	[54 % – 88 %]	[57 % – 93 %]	[55 % – 90 %]	[57 % – 93 %]
<i>Index (FY2016 = 100)</i>	100	106	103	106

Source: Questionnaire reply

- (191) Production slightly fluctuated during the period considered. While it increased between 2016 and 2017 by 6 %, it decreased between 2017 and 2018 by 3 %, and then it increased again in the review investigation period by 3 %. Overall, the production volume increased by 6 % over the period considered. The investigation showed that the fluctuations were mainly caused by maintenance shutdowns that the Union industry undertook (in certain years 16 days and in others 10 days).
- (192) The production capacity remained stable in the period considered.
- (193) As a result of a stable production capacity, the capacity utilisation developed in line with the production volume, namely it first increased between 2016 and 2017, then decreased between 2017 and 2018 and increased again in the review investigation period. Therefore, capacity utilisation also increased by 6 % over the period considered.

5.5.3. Sales volume and market share

- (194) The Union industry's sales volume and market share developed over the period considered as follows:

Table 8

Sales volume and market share

	2016	2017	2018	Review Investigation Period
Sales volume on the Union market (tonnes)	[36 451 – 59 363]	[39 167 – 63 787]	[37 272 – 60 700]	[36 689 – 59 750]
<i>Index (FY2016 = 100)</i>	100	107	102	101
Market share	[53 % – 89 %]	[55 % – 93 %]	[56 % – 93 %]	[56 % – 94 %]
<i>Index (FY2016 = 100)</i>	100	105	105	106

Source: Questionnaire reply

- (195) Sales volume of MSG by the Union industry barely increased by 1 % over the period considered. It first increased by 7 % between 2016 and 2017 and then decreased by 6 % by the end of the review investigation period. The parallel decrease in consumption led to an increase of the market share of the Union industry by 6 % over the period considered.

5.5.3.1. Growth

- (196) As stated above, while the Union consumption on free market decreased by 5 % over the period considered, the sales volume of the Union industry slightly increased by 1 %, which translates in an increase of market share of 6 %.

5.5.4. Employment and productivity

(197) Employment and productivity developed over the period considered as follows:

Table 9

Employment and productivity

	2016	2017	2018	Review Investigation Period
Number of employees	[137 – 222]	[138 – 225]	[133 – 217]	[132 – 215]
<i>Index</i> (FY2016 = 100)	100	101	97	97
Productivity (tonnes/ employee)	[243 – 396]	[253 – 413]	[256 – 416]	[266 – 433]
<i>Index</i> (FY2016 = 100)	100	104	105	109

Source: Questionnaire reply

(198) Employment of the Union industry decreased by 3 % over the period considered. This decrease was due to synergies in shared services (such as information technology ('IT') and human resources ('HR')) after the integration of the frozen retail business into AFE.

(199) Productivity increased due to the combination of a decrease in employment and an increase in production volume as explained in recital (191).

5.5.5. Magnitude of the dumping margin and recovery from past dumping

(200) The dumping margins for the countries concerned were significantly above the *de minimis level* as stated in recital (134) and (143) and the volume and market share of the imports from the countries concerned remained significant during the period considered as described in recitals (174) to (176).

(201) Therefore, continuous unfair pricing by exporting producers from the PRC and Indonesia did not allow the Union industry to recover from the past dumping practices.

5.5.6. Prices and factors affecting prices

(202) The weighted average unit sales prices of the sole Union producer to unrelated customers in the Union developed over the period considered as follows:

Table 10

Sales prices and costs in the Union

	2016	2017	2018	Review Investigation Period
Average unit sales price on the free market (EUR/kg)	[0,94 – 1,52]	[0,86 – 1,40]	[0,84 – 1,36]	[0,87 – 1,42]
<i>Index</i> (FY2016 = 100)	100	92	90	93
Unit cost of production (EUR/kg)	[0,91 – 1,49]	[0,91 – 1,49]	[0,95 – 1,55]	[0,88 – 1,43]
<i>Index</i> (FY2016 = 100)	100	100	104	96

Source: Questionnaire reply

- (203) The Union industry's average unit selling price to unrelated customers in the Union decreased by 7 % over the period considered. It had a decreasing trend between 2016 and 2018 and then it increased in the review investigation period. The trend of the Union industry's selling price followed the trend of the Chinese and Indonesian import price in the Union market.
- (204) The unit cost of production decreased over the period considered by 4 %. It was stable between 2016 and 2017 then it increased by 4 % in 2018 as compared to 2017 and decreased by 8 % in the review investigation period. The decrease in the cost of production in 2019 as compared to 2018 is due to the efforts of the Union industry to decrease the consumption of raw materials in the manufacturing process as well as a decrease in the price of raw materials.

5.5.7. Labour costs

- (205) The average labour costs of the sole Union producer developed over the period considered as follows:

Table 11

Average labour costs per employee

	2016	2017	2018	Review Investigation Period
Average labour costs per employee (EUR)	[49 321–80 323]	[50 538–82 304]	[48 606–79 159]	[48 282–78 631]
Index (FY2016 = 100)	100	102	99	98

Source: Questionnaire reply

- (206) The average labour cost per employee decreased by 2 % over the period considered. This decrease is linked to synergies in the IT, finance, HR and top management functions gained after the integration of the frozen retail business into AFE as mentioned in recital (198).

5.5.8. Inventories

- (207) Stock levels of the sole Union producer developed over the period considered as follows:

Table 12

Inventories

	2016	2017	2018	Review Investigation Period
Closing stocks (tonnes)	[12 765–20 789]	[9 706–15 807]	[8 054–13 116]	[9 926–16 166]
Index (FY2016 = 100)	100	76	63	78
Closing stocks as a percentage of production	[19 % – 31 %]	[14 % – 22 %]	[12 % – 19 %]	[14 % – 23 %]
Index (FY2016 = 100)	100	72	62	74

Source: Questionnaire reply

- (208) Overall closing stocks decreased by 22 % over the period considered. Closing stocks had a decreasing trend between 2016 and 2018 and then it increased in the review investigation period by 23 % as compared to 2018. Despite the decreasing trend the level of stocks remained high during the period considered.
- (209) Closing stocks as a percentage of production decreased between 2016 and 2018 by 38 % and then it increased by 20 % in the review investigation period. Overall, it decreased by 26 %. This decreasing trend followed the decreasing trend of the closing stocks and the small increase of production volume.

5.5.9. Profitability, cash flow, investments, return on investments and ability to raise capital

- (210) Profitability, cash flow, investments and return on investments of the sole Union producer developed over the period considered as follows:

Table 13

Profitability, cash flow, investments and return on investments

	2016	2017	2018	Review Investigation Period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	[1,6 % – 2,7 %]	[-7,2 % – -4,4 %]	[-15,35 % – -9,4 %]	[-0,6 % – -0,4 %]
<i>Index (FY2016 = 100)</i>	100	-269	-574	-22
Cash flow (thousands EUR)	[5 822 – 9 481]	[3 838 – 6 251]	[-3 733 – -2 292]	[2 886 – 4 699]
<i>Index (FY2016 = 100)</i>	100	66	-39	50
Investments (thousands EUR)	[4 302 – 7 006]	[4 609 – 7 506]	[5 419 – 8 825]	[3 307 – 5 386]
<i>Index (FY2016 = 100)</i>	100	107	126	77
Return on investments	[0,3 % – 0,5 %]	[-6,3 % – -3,9 %]	[-14,6 % – -8,9 %]	[-1,5 % – -0,9 %]
<i>Index (FY2016 = 100)</i>	100	-1 168	-2 701	-286

Source: Questionnaire reply

- (211) The Commission established the profitability of the sole Union producer by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability decreased significantly between 2016 and 2018. The sole Union producer recorded losses between 2017 and 2019. In 2019, the profitability improved as compared to 2018 due to an increase in the selling price and a decrease of the cost of production as stated in recitals (203) and (204). Over the period considered, profitability nevertheless fell from [1,6 % – 2,7 %] in 2016 to losses of [-0,6 % – -0,4 %] in the RIP.
- (212) The net cash flow is the Union industry's ability to self-finance their activities. The net cash flow showed the same trend as profitability: it decreased between 2016 and 2018 before increasing during the review investigation period. Overall, the net cash flow decreased by 50 % over the period considered.

- (213) Investments decreased by 23 % over the period considered. They mainly represented investments necessary for maintaining the equipment, reduction of consumption of raw materials, as well as investments for compliance with legal requirements for safety and environmental protection.
- (214) The return on investments is the profit in percentage of the net book value of investments. As with the other financial indicators, the return on investment had a decreasing trend between 2016 and 2018 and slightly increased in the review investigation period. Over the period considered, return on investments fell by 386 %.
- (215) Finally, taking into account the decreasing profitability and decreasing cash flow, the company's ability to raise capital was also negatively affected.

5.6. Conclusion on injury

- (216) Despite the measures in force, the dumped imports from China and Indonesia continued in significant volumes.
- (217) The Union industry is in a difficult financial situation. Although some of the injury indicators, such as production volume, market share and stocks show a favourable trend, other indicators, such as sales prices, profitability, cash flow, investments and return on investment show a negative trend.
- (218) Despite the measures in force, the increase in productivity and the fact that the Union industry managed to decrease its cost of production, the Union industry still registered losses between 2017 and 2019.
- (219) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (220) Next, the Commission assessed whether there is a causal link between imports from the countries concerned and the injury suffered by Union industry.
- (221) Regarding the PRC, the investigation revealed that the volume of imports remained above *de minimis* levels during the entire period considered. Although the undercutting margin was negative when applying the anti-dumping duties to the price of imports during the review investigation period, the undercutting margin without the anti-dumping duties included was above 20 %. Furthermore, as the Union industry is loss-making and given the target profit of between 5 % and 15 % as established during the original investigation for Indonesia ⁽⁹²⁾, Chinese imports are clearly entering the Union at injurious prices.
- (222) As regards Indonesia, the investigation also revealed that, as in the case of the PRC, the imports were above *de minimis* levels during the entire period considered. The undercutting margin was negative without the anti-dumping duties. Nevertheless, the current import prices without anti-dumping duties would result in an underselling margin of more than 7 % when compared to a target price established on the basis of the EU's industry cost of production during the RIP and the target profit of between 5 % and 15 % as established during the original investigation for Indonesia.
- (223) Considering the above, the Commission concluded that the material injury suffered by the Union industry was caused by the imports from the PRC and it could not have been caused by the imports from Indonesia as due to the effect of the measures the Indonesian imports were made at prices that did not cause injury to the Union industry.
- (224) Therefore, the Commission further examined the likelihood of continuation of injury caused by dumped imports from the PRC and the likelihood of recurrence of injury caused by dumped imports from Indonesia if the measures were repealed.

⁽⁹²⁾ Commission Implementing Regulation (EU) No 904/2014 of 20 August 2014 imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia (OJ L 246, 21.8.2014, p. 1), recital 151

6. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY

6.1. Likelihood of continuation of injury from the PRC

(225) The Commission concluded in recital (219) that the Union industry suffered material injury during the review investigation period. In recital (223), the Commission also determined that the material injury suffered by the Union industry was caused by the imports from the PRC. The Commission further assessed whether in this case there would be a likelihood of continuation of injury caused by the dumped imports from the PRC if the measures against were allowed to lapse.

(226) In this respect, the following elements were analysed by the Commission: the production volume and spare capacity in the PRC, the attractiveness of the Union market for the Chinese exporting producers, the likely price levels of imports from the PRC in the absence of anti-dumping measures, and their impact on the Union industry.

6.1.1. The production capacity, spare capacity in the PRC and attractiveness of the Union market

(227) As explained in recitals (147) to (153), based on the significant overcapacity in the PRC and the attractiveness of the Union market for Chinese exporting producers, there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of exports.

6.1.2. Impact of imports from the PRC on the situation of the Union industry should the measures be allowed to lapse

(228) Regarding the likely effect of such imports, the Commission examined their likely price levels should measures be allowed to lapse. In this regard, the Commission considered the import price levels during the review investigation period without anti-dumping duty a reasonable indication. On this basis, the Commission established significant undercutting of the Union industry prices (more than 20 %).

(229) Furthermore, as the Union industry was loss-making almost the entire period considered as stated in recital (211), and considering that, as explained in recital (221) the target profit established for such industry is between 5 % and 15 %, Chinese imports have been entering the Union at injurious prices.

(230) Therefore, it is concluded that the situation of the Union industry, which is already suffering material injury, would further deteriorate should the measures be repealed. Indeed, in the absence of measures, Chinese dumped imports at injurious prices would likely exert a further downward pressure on the sales prices in the Union market. The Union industry will very likely be obliged to decrease its sales prices which would lead to further loss of profitability and, in all likelihood, important losses in the short term.

(231) Alternatively, any attempt to increase its sales prices to profitable levels on the side of the Union industry will very likely lead to a loss of sales volumes and market share to the low priced imports. Given the massive spare capacities in the PRC, Chinese exporting producers will be able to increase their exports in the short term and gain important market share at the expense of the Union industry. The Union industry will very likely lose economies of scale, which will lead to an increase of the unit production cost and consequently cause further decreases in profitability to the Union industry. As a consequence, the viability of the Union industry would be at serious risk.

6.1.3. Conclusion

(232) In view of the above findings, namely the massive spare capacity in the PRC, the attractiveness of the Union market, the price levels of imports from the PRC in the absence of anti-dumping measures and their likely impact on the Union industry, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and material injury would be likely to continue.

6.2. Likelihood of recurrence of injury from Indonesia

(233) The Commission concluded in recital (219) that the Union industry suffered material injury. In recital (223), the Commission also determined that the material injury suffered by the Union industry could not have been caused by the imports from Indonesia. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury caused by the dumped imports from Indonesia if the measures against were allowed to lapse.

(234) In this regard, the Commission examined the production capacity and spare capacity in Indonesia, the market situation in Indonesia, the attractiveness of the Union market for the Indonesian exporting producers, the likely price levels of imports from Indonesia in the absence of anti-dumping measures, and their impact on the Union industry.

6.2.1. Production capacity and spare capacity in Indonesia, market situation in Indonesia and attractiveness of the Union market

(235) As explained in recitals (158) to (165), based on the substantial excess capacity of the Indonesian producers, the domestic market situation in Indonesia and the attractiveness of the Union market for Indonesian exporting producers, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of exports.

6.2.2. Impact of imports from Indonesia on the situation of the Union industry should the measures be allowed to lapse

(236) The Commission examined the likely price levels of Indonesian imports should measures be allowed to lapse based on Indonesian import price levels during the review investigation period and their effect on the situation of the Union industry. While there was no undercutting of the Union industry prices by the Indonesian exporters after the deduction of the anti-dumping duties in place, there was underselling of more than 7 %, using a target profit of between 5 % and 15 % as explained in recital (229). This shows that, should the measures be allowed to lapse, Indonesian imports would be made at injurious price levels, increasing the price pressure on the Union industry that would then either lose sales volume or be obliged to decrease their price levels. This would very quickly turn to a situation of significant losses, which is not viable in the short term.

6.2.3. Conclusion

(237) In view of the above findings, namely the presence of spare capacity in Indonesia, the market situation in Indonesia, the attractiveness of the Union market and the expected price levels of imports from Indonesia in the absence of anti-dumping measures and their impact on the Union industry, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from Indonesia at injurious prices and material injury would be likely to recur.

7. UNION INTEREST

(238) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

(239) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(240) On this basis the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and injury for the PRC and of continuation of dumping and recurrence of injury for Indonesia, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

7.1. Interest of the Union industry

- (241) The investigation established that the Union industry suffered material injury. As mentioned in recital (223) the material injury was caused by the dumped imports from the PRC and therefore it was concluded that there was likelihood of continuation of material injury should measures against the PRC be allowed to lapse. The investigation also established that there was a likelihood of recurrence of material injury should measures against Indonesian imports be allowed to lapse. In particular, the expected recovery of the Union industry from the material injury suffered is likely to be jeopardised should the Chinese and Indonesian imports of MSG increase on the Union market at dumped prices.
- (242) Should measures be maintained, it is expected that the Union industry will gradually be able to fully benefit from the effects of the measures imposed. This is also confirmed by the fact that the anti-dumping measures on imports of MSG from the PRC were extended to imports of MSG in mixture or in solution originating in the PRC following an anti-circumvention investigation in 2020 as explained in recitals (8) and (9).
- (243) Should the measures be allowed to lapse, the situation of the Union industry is very likely to further deteriorate as explained above in the analysis of likelihood of continuation/recurrence of injury in recitals (225) to (237).
- (244) It was therefore concluded that maintaining the measures in force against the PRC and Indonesia would be in the interest of the Union industry.

7.2. Interest of unrelated importers

- (245) Four unrelated importers came forward following the publication of the Notice of Initiation. Four of them fully cooperated in the investigation by submitting a complete questionnaire reply.
- (246) Two of the cooperating unrelated importers imported MSG from both the PRC and Indonesia and the other two only from Indonesia. For all of them the impact of the MSG activity in their total turnover was very limited (below 1,5 % of the total turnover). Furthermore, the investigation revealed that the importers were profitable, despite the measures in force. The imported MSG was used for both the food sector as well as non-food sector.
- (247) On these grounds, the Commission concluded that should measures be maintained, the impact on the economic situation of the importers is likely not to be significant.

7.3. Interest of users

- (248) Users are mainly active in the food and beverage sector and use MSG to produce spice mixes, soups and other preparations. MSG may be used for specific applications in the non-food sector for instance to produce detergents.
- (249) No users cooperated in the investigation.
- (250) The current investigation did not reveal any significant adverse impact of the measures in force on users. Previous investigations against China and Indonesia revealed that the measures did not appear to have had any significant adverse effect on the cooperating users.
- (251) On these grounds, the Commission concluded that should the measures be maintained, the impact on the economic situation of these operators is likely not to be significant.

7.4. Conclusion on Union interest

- (252) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the existing measures on imports of MSG originating in the countries concerned.

8. ANTI-DUMPING MEASURES

- (253) On the basis of the conclusions reached by the Commission on the likelihood of continuation of dumping for the PRC and Indonesia, the likelihood of continuation of injury for the PRC and recurrence of injury for Indonesia as well as the Union interest, the anti-dumping measures on imports of MSG originating in the PRC and Indonesia should be maintained.
- (254) To minimize the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (255) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (256) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (257) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product under review produced by these companies and thus by the specific legal entities mentioned. Imports of the product under review manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'. Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽⁹³⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (258) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. Only the applicant submitted comments welcoming the Commission's findings.
- (259) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁹⁴⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

⁽⁹³⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁹⁴⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

(260) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of monosodium glutamate, currently falling under CN code ex 2922 42 00 (TARIC code 2922 42 00 10) and originating in the People's Republic of China.

2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below, shall be as follows:

Country	Company	Anti-dumping duty (%)	TARIC additional code
The PRC	Hebei Meihua MSG Group Co. Ltd and Tongliao Meihua Bio-Tech Co. Ltd	33,8	A883
The PRC	Fujian Province Jianyang Wuyi MSG Co. Ltd	36,5	A884
The PRC	All other companies	39,7	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: '*I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.*' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

1. The definitive anti-dumping duty applicable to 'all other companies' as set out in Article 1 paragraph 2 is hereby extended to imports of monosodium glutamate in mixture or in solution, containing by dry weight 50 % or more of monosodium glutamate, currently falling under CN codes ex 2103 90 90, ex 2104 10 00, ex 2104 20 00, ex 3824 99 92, ex 3824 99 93 and ex 3824 99 96 (TARIC codes 2103 90 90 11, 2103 90 90 81, 2104 10 00 11, 2104 10 00 81, 2104 20 00 11, 3824 99 92 98, 3824 99 93 89 and 3824 99 96 89), originating in the People's Republic of China.

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

Article 3

1. Requests for exemption from the duty extended by Article 2 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
 Directorate-General for Trade
 Directorate G
 Office: CHAR 04/039
 1049 Brussels
 Belgium

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Article 1 of this Regulation.

Article 4

1. A definitive anti-dumping duty is imposed on imports of monosodium glutamate, currently falling under CN code ex 2922 42 00 (TARIC code 2922 42 00 10) and originating in Indonesia.
2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below, shall be as follows:

Country	Company	Anti-dumping duty (%)	TARIC additional code
Indonesia	PT. Cheil Jedang Indonesia	7,2	B961
Indonesia	PT. Miwon Indonesia	13,3	B962
Indonesia	All other companies	28,4	B999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 5

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

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

Done at Brussels, 14 April 2021.

For the Commission
The President
Ursula VON DER LEYEN