

## II

(Non-legislative acts)

## REGULATIONS

## 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**

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 <sup>(1)</sup> ('the basic Regulation'), and in particular Articles 13(3) and 14(5) thereof,

Whereas:

## 1. PROCEDURE

## 1.1. Measures in force and parallel investigation

- (1) In November 2008, the Council imposed, by Regulation (EC) No 1187/2008 <sup>(2)</sup> ('the original Regulation'), a definitive anti-dumping duty on imports of monosodium glutamate ('MSG') originating in the People's Republic of China ('PRC'). The measures took the form of an *ad valorem* duty ranging between 33,8 % and 39,7 %.
- (2) In January 2015, by Implementing Regulation (EU) 2015/83 <sup>(3)</sup>, the Commission, following an expiry review, imposed a definitive anti-dumping duty on imports of MSG originating in the PRC (the 'previous expiry review').
- (3) At the same time, the Commission imposed by Implementing Regulation (EU) 2015/84 <sup>(4)</sup>, a definitive anti-dumping duty on imports of MSG originating in Indonesia.
- (4) On 21 January 2020, the Commission initiated an expiry review <sup>(5)</sup>, pursuant to Article 11(2) of the basic Regulation, of the anti-dumping measures applicable to imports of MSG originating in the PRC and in Indonesia. The review investigation is on-going.

## 1.2. Request

- (5) On 8 January 2020, the Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation, to investigate the possible circumvention of the anti-dumping measures imposed on imports of MSG originating in the PRC and to make such imports subject to registration. The request was lodged by the sole Union producer of MSG, Ajinomoto Foods Europe SAS ('the applicant').

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> 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).

<sup>(3)</sup> 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).

<sup>(4)</sup> 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).

<sup>(5)</sup> 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).

- (6) The applicant provided sufficient evidence that the existing anti-dumping measures on imports of MSG are being circumvented. According to this evidence:
- a change in the pattern of trade involving exports from the PRC to the Union had taken place following the imposition of the definitive anti-dumping duty by Implementing Regulation (EU) 2015/83,
  - this change stems from the importation of a slight modification of the product concerned that does not alter its fundamental characteristics but makes it fall under customs codes which are normally not subject to the measures, and there is no due cause or economic justification for such practice other than the imposition of the duty,
  - the remedial effects of the existing anti-dumping measures on the product concerned were being undermined both in terms of quantity and price, and
  - the prices of the slightly modified product were dumped in relation to the normal value previously established.

### 1.3. Initiation

- (7) After having determined that sufficient evidence existed, the Commission initiated an investigation pursuant to Article 13(3) of the basic Regulation, in order to determine if imports into the Union of MSG in mixture or in solution, containing by dry weight 50 % or more of MSG, and originating in the PRC, are circumventing the existing measures.
- (8) The investigation was initiated by Commission Implementing Regulation (EU) 2020/230 <sup>(6)</sup> ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the initiating Regulation directed the customs authorities to register imports of slightly modified product from the PRC.

### 1.4. Product concerned and product under investigation

- (9) The product concerned by the possible circumvention is monosodium glutamate, currently falling under CN code ex 2922 42 00 (TARIC code 2922 42 00 10) and originating in the PRC ('the product concerned' or 'MSG'). The product concerned is subject to anti-dumping measures imposed by Implementing Regulation (EU) 2015/83. It is mainly used as a flavour enhancer in soups, broths, fish and meat dishes and ready-made food. It can also be used in the chemical industry for non-food applications such as detergents. MSG is produced by bacterial fermentation of a sugar source (for example corn starch, wheat starch, or tapioca starch, as well as sugar syrup, sugar cane molasses and sugar beet molasses). It is also known by the code E621 and according to Commission Regulation (EU) No 231/2012 <sup>(7)</sup> on specifications for food additives, is described as white, practically odourless crystals or crystalline powder. Its chemical name and formula is Monosodium L-glutamate monohydrate and  $C_5H_8NaNO_4 \cdot H_2O$ , respectively.
- (10) The product under investigation for possible circumvention is 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) and originating in the People's Republic of China ('the product under investigation' or 'MSG mixtures').

### 1.5. Investigation period and reporting period

- (11) The investigation period covered the period from 1 January 2013 to 31 December 2019 ('the investigation period' or 'IP'). Data were collected for the investigation period to investigate, inter alia, the alleged change in the pattern of trade.
- (12) More detailed data were collected for the reporting period from 1 January 2019 to 31 December 2019 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

<sup>(6)</sup> 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).

<sup>(7)</sup> Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council (OJ L 83, 22.3.2012, p. 1).

### 1.6. Investigation

- (13) The Commission officially informed the authorities of the PRC, the known exporting producers in the PRC, the importers/users in the Union known to be concerned and the applicant of the initiation of the investigation.
- (14) The initiating Regulation invited all interested parties to present their views in writing and submit questionnaire replies or any other information within 37 days of the initiation of the current investigation. On the date of initiation, the exemption form, the questionnaire for exporting producers in the PRC and the questionnaire for importers/users in the Union were made available on DG Trade's website at [https://trade.ec.europa.eu/tdi/case\\_details.cfm?id=2448](https://trade.ec.europa.eu/tdi/case_details.cfm?id=2448)
- (15) Interested parties were given the opportunity to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on facts available.
- (16) One importer and six users in the Union submitted questionnaire replies. Following requests for clarifications of their replies to the questionnaires, the importer and one user withdrew their cooperation.

### 1.7. Non-cooperation

- (17) No exporting producer or trader from the PRC of either the product concerned or the product under investigation came forward. On 2 April 2020, the Commission informed the government of the PRC of this fact and of its intention to apply facts available in accordance with Article 18 of the basic Regulation.
- (18) Equally, no importer or user in the Union of the product under investigation, cooperated during this investigation. The five cooperative users that submitted questionnaire replies declared that they were importing or using the product concerned and all confirmed that they did not import or use the product under investigation.
- (19) Due to the absence of cooperation, findings were based on facts available in accordance with Article 18 of the basic Regulation.

## 2. RESULTS OF THE INVESTIGATION

### 2.1. General considerations

- (20) In accordance with Article 13(1) of the basic Regulation, the Commission analysed successively the following elements in order to assess possible circumvention:
  - whether there was a change in the pattern of trade between the PRC and the Union,
  - if this change stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty,
  - if there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and
  - whether there is evidence of dumping in relation to the normal values previously established for the like product.

### 2.2. Change in the pattern of trade

- (21) In order to establish a possible change in the pattern of trade the Commission analysed the volume of imports of MSG and MSG mixtures throughout the investigation period.
- (22) The volume of imports of MSG was established on the basis of Eurostat data at TARIC <sup>(8)</sup> code level for the investigation period. MSG is currently falling under TARIC code 2922 42 00 10.
- (23) The volume of imports of the MSG mixtures, could not be established on the basis of Eurostat data for the following reasons: imports of the MSG mixtures were allegedly made under CN codes 2103 90 90, 2104 10 00, 2104 20 00, 3824 90 92, 3824 90 93 and 3824 90 96. These CN codes have a broader scope than that of the product under investigation. Analysing the change in the pattern of trade on the basis of imports under those CN codes would therefore have resulted in an overestimation of actual import quantities of MSG mixtures or solutions.

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<sup>(8)</sup> The Integrated Tariff of the European Union

- (24) In order to establish a more accurate determination of the import volume of MSG mixtures, and in the absence of any other more reliable source, the Commission used the following methodology, based on the methodology suggested by the applicant in the request:
- (25) It first established the combined export volumes of MSG and of the MSG mixture known as 'Gourmet Powder' <sup>(9)</sup>, from the PRC to the Union as recorded in Global Trade Atlas or 'GTA' <sup>(10)</sup> under the Chinese customs codes 2922 42 20 and 2103 90 10, respectively. Whilst data for 'Gourmet Powder' should cover mixtures containing between 80 % and 99 % MSG, it could also cover exports of pure MSG in packages for retail market. Furthermore, it cannot be excluded that some MSG mixtures, with small amounts of additives are being exported from the PRC as pure MSG.
- (26) Therefore, in order to obtain figures for imports of MSG mixtures, the Commission subtracted from the total export volume thus established the volume of imports of MSG as recorded in the Eurostat database under TARIC code 2922 42 00 10 (see recital 22).
- (27) The resulted difference was considered as a reasonably accurate determination of the volume of imports of the MSG mixtures in the Union.
- (28) On 28 May 2020, the Commission notified all the interested parties of its intention to use the above methodology and invited them to express their views on the methodology and figures presented. Only the applicant submitted comments, agreeing with the methodology and the figures.
- (29) Based on the methodology described above, the Commission obtained the following import data:

#### Imports from the PRC into the Union

(Unit: tonnes)

	2013	2014	2015	2016	2017	2018	RP
Product concerned	2 317	3 515	5 234	3 652	3 624	2 221	3 063
Product under investigation	2 484	2 437	4 535	2 765	3 046	4 336	8 558

Source: GTA, Eurostat

- (30) The imports of MSG mixtures from the PRC into the Union increased by 244 % during the IP, reaching 8 558 tonnes in the RP. With regards to imports of MSG, following the initial increase between 2013 and 2015 there was a decrease of imports from 2015 onwards, reaching 3 063 tonnes in the RP.
- (31) On this basis, it can be concluded that a change in pattern of trade within the meaning of Article 13(1) of the basic Regulation has taken place.

#### 2.3. The change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty

- (32) Article 13(1) of the basic Regulation requires that the change in pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of duty. As mentioned in recital 31, it was concluded that there is a change in pattern of trade. As mentioned in recital 19, due to the absence of cooperation, findings were based on facts available in accordance with Article 18 of the basic Regulation.
- (33) In the request, the applicant alleged that Chinese producers are exporting significant amounts of MSG mixtures in order to fall under customs codes that are not subject to the measures. This process slightly modifies the product without altering its fundamental characteristics.

<sup>(9)</sup> Gourmet Powder is a well-known Chinese MSG mixture which should cover mixtures containing 80 % to 99 % MSG and sodium chloride.

<sup>(10)</sup> [https://www.gtis.com/gta/secure/htscty\\_wta.cfm](https://www.gtis.com/gta/secure/htscty_wta.cfm).

- (34) Already in 2015, Member States customs authorities informed the Commission services that the practice was taking place. Customs authorities had observed an increase of imports of MSG mixtures with approximately 1 % of table salt under different customs codes than those subject to the investigation, while the imports of pure MSG decreased. In their view, the sole purpose of that practice was to avoid the anti-dumping duty because the mixtures did not change the characteristics of the product and had the same applications and uses as pure MSG.
- (35) Binding Tariff Information ('BTI') decisions issued by several Member States customs administrations confirm that the practice is taking place. These BTI <sup>(11)</sup> classify, for customs purposes, mixtures in concentrations of 50 % to 99 % of MSG under CN and TARIC codes that are not subject to the measures. All these BTI decisions were issued in the IP, and were valid from the date of issue throughout the IP. The description of the goods for which BTI was issued confirm that they concern the product under investigation. Therefore, imports of the product under investigation made using this BTI do not pay the anti-dumping duties.
- (36) An analysis of the BTI as well the BTI applications available to the Commission confirm that the use is the same as that of the product concerned. Further, some holders of the BTI are known importers of the product concerned from previous investigations. In fact, one of the holders of BTI was also identified by MS customs administrations as the importer of the transactions explained in recital 34.
- (37) The investigation did not reveal any economic justification for the use of the product under investigation. As shown by the applicant's request, the practice of using MSG mixtures instead of pure MSG imposes an additional economic burden on users, requiring them to adjust their product, labelling and recipes to take account of increased salt volumes. There is no economic justification for it other than circumvention of the measures on MSG. Furthermore the Commission notes that the purposeful addition of salt to MSG adds an extra step to the production process which imposes an additional economic burden for producers in the form of additional work and oversight, i.e., increased costs of production.
- (38) As mentioned in recital 16 the Commission initially received questionnaire replies from six users. One user clarified that it was using pure MSG in order to create its own MSG mixtures depending on the percentage of MSG that was applied. Some of the users that cooperated declared that they were buying mixtures of MSG from Union suppliers. None of them reported any imports of the product under investigation and none of them commented or provided any justification for the use of it.
- (39) In the light of the above, based on Article 18 of the basic Regulation, the Commission concluded that a slight modification of the product concerned, that does not alter its fundamental characteristics but makes it fall under customs codes which are normally not subject to the measures, is taking place, and there is no due cause or economic justification for such practice other than the imposition of the duty.

#### 2.4. The remedial effects of the duty are being undermined

- (40) In accordance with Article 13(1) of the basic Regulation, the Commission assessed whether the imported MSG mixtures had, in terms of quantities and prices, undermined the remedial effects of the existing measures on imports of MSG originating in the PRC.
- (41) As mentioned in recital 29, the investigation established that imports of MSG mixtures during the reporting period were imported in significant quantities. They amounted more than 10 % of Union consumption in the RP. Union consumption is based on the figures estimated by the applicant in the request i.e. [77 000 – 79 000] <sup>(12)</sup> tonnes.
- (42) The Commission compared the average export price of the MSG mixtures during the reporting period (established by the same methodology as the one referred to in recital 24), duly adjusted from FOB <sup>(13)</sup> to CIF <sup>(14)</sup> level, with the average non-injurious prices of the Union industry as established during the RIP of the previous expiry review.
- (43) The comparison revealed significant underselling margin of 93 %.

<sup>(11)</sup> DE5918/15-1 and PLPL-WIT-2015-0055, both issued in 2015 for classification of mixture MSG 99 % + Salt 1 % under nomenclature code 3824909390; PLBTIWIT-2020-000347 issued in 2020 (replacing PL-WIT-2017-00240 issued in 2017), for classification of mixture MSG 99 % + Salt 1 % under nomenclature code 38249993; DEBTI9861/20-1 issued in 2020, for classification of mixture consisted of 50 % or more MSG under nomenclature code 3824999389; ES2015SOL00000001076-1 issued in 2016, for classification of a mixture consisted of 59,9 % of MSG + Salt, under nomenclature code 21039090.

<sup>(12)</sup> As there is only one Union producer and in order to respect the confidentiality of such data, the total consumption is presented in the form of a range.

<sup>(13)</sup> Free On Board

<sup>(14)</sup> Cost Insurance and Freight

- (44) Based on these data, the Commission concluded that the imports of MSG mixtures are undermining the remedial effects of the measures in force both in terms of quantities and prices.

### 2.5. Evidence of dumping

- (45) In accordance with Article 13(1) of the basic Regulation, the Commission assessed whether there was dumping in relation to the normal values previously established for the like product. To this end, the Commission compared the average export price of the MSG mixtures during the reporting period (established by the same methodology as the one referred to in recital 24), with the normal value established for the like product in the previous expiry review.
- (46) The comparison revealed a significant dumping margin of 99,7 %.

### 2.6. Measures

- (47) Based on the findings above the Commission concluded that the existing measures on imports of MSG originating in the PRC as defined in the previous expiry review were circumvented by imports of the product under investigation.
- (48) The investigation established that there was a change in the pattern of trade between the PRC and the Union, and that this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. The Commission also found that the remedial effects of the duty are being undermined in terms of the prices and quantities of the like product, whilst significant dumping was found as well, in relation to the normal value previously established for the like product.
- (49) Therefore, in accordance with Article 13(1) of the basic Regulation, the anti-dumping measures in force should be extended to imports of the product under investigation.
- (50) Pursuant to Article 13(1), second paragraph of the basic regulation, the measure to be extended should be the one established in Article 1(2) of Implementing Regulation (EU) 2015/83 'all other companies', which is a definitive anti-dumping duty of 39,7 % applicable to the net, free-at-Union-frontier price, before duty.
- (51) Pursuant to Articles 13(3) and 14(5) of the basic Regulation, which provide that any extended measures should apply to imports which entered the Union under registration imposed by the initiating Regulation, the anti-dumping duty should be collected on those registered imports of the product under investigation.

## 3. DISCLOSURE

- (52) All interested parties were informed of the essential facts and considerations leading to the above conclusions. They were also granted a period to submit comments subsequent to that disclosure. The Commission received comments only by the applicant, who supported the proposed approach.
- (53) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036.

HAS ADOPTED THIS REGULATION:

### *Article 1*

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Article 1 of Implementing Regulation (EU) 2015/83 on imports of monosodium glutamate originating in the People's Republic of China is hereby extended to imports into the Union 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. The duty extended by paragraph 1 of this Article shall be collected on imports originating in the People's Republic of China, registered in accordance with Article 2 of Implementing Regulation (EU) 2020/230 and with Articles 13(3) and 14(5) of Regulation (EU) 2016/1036.

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

#### *Article 2*

1. Requests for exemption from the duty extended by Article 1 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 H  
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 Implementing Regulation (EU) 2015/83, from the duty extended by Article 1 of this Regulation.

#### *Article 3*

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Implementing Regulation (EU) 2020/230.

#### *Article 4*

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, 12 October 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN