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

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) The European Commission ('the Commission') imposed as from 22 August 2014 a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia by Implementing Regulation (EU) No 904/2014 [2] ('the provisional Regulation').

(2) The proceeding was initiated on 29 November 2013 following a complaint lodged on 16 October 2013 by Ajinomoto Foods Europe SAS ('the complainant'), the sole Union producer of monosodium glutamate, thus representing 100 % of the total Union production of monosodium glutamate.

(3) As set out in recital 20 of the provisional Regulation the investigation of dumping and injury covered the period from 1 October 2012 to 30 September 2013 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 April 2010 to the end of the investigation period ('the period considered').

2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(5) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the provisional findings accordingly.

(6) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of monosodium glutamate originating in Indonesia and definitively collect the amounts secured by way of provisional duty ('the definitive disclosure'). All parties were granted a period within which they could make comments on the definitive disclosure.

(7) The comments submitted by the interested parties were considered and taken into account where appropriate.

3. Sampling

(8) In the absence of comments concerning the method of sampling of unrelated importers, the provisional findings in recitals 7 to 19 of the provisional Regulation are confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(9) As set out in recital 21 of the provisional Regulation, the product concerned is monosodium glutamate ('MSG') originating in Indonesia, currently falling within CN code ex 2922 42 00 ('the product concerned'). MSG is a food additive and mainly used as a flavour enhancer in soups, broths, fish and meat dishes, spice blends and

[1] OJ L 343, 22.12.2009, p. 51.
[2] 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).

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. MSG is available in various packing sizes, ranging from consumer packs of 0,5 g to 1 000 kg bulk bags. Smaller packing sizes are sold via retailers to private consumers, while the larger sizes of 20 kg and more are destined for industrial users. In addition, different purity grades exist. However, there are no differences in the characteristics of monosodium glutamate based on pack size or purity grade.

(10) In the absence of any comments regarding the product concerned and the like product, the conclusions reached in recitals 21 to 25 of the provisional Regulation are confirmed.

C. **DUMPING**

1. **Normal value**

(11) In the absence of any comments regarding normal value, recitals 26 to 31 of the provisional Regulation are confirmed.

2. **Export price**

(12) Both cooperating Indonesian exporting producers reiterated their claims that sales prices to their related companies are at arm's length and that the determination of the export price should therefore be based on the sales price between the mother company in Indonesia and the first related customer, rather than on a constructed export price.

(13) In support of this claim both exporting producers argued that no evidence was available concerning cross-compensation between products or other cost incurred between the mother company in Indonesia and their related companies. The conclusions in recital 37 of the provisional Regulation should not have been therefore based on these elements.

(14) One exporting producer claimed, in addition, that its related company in the Union was not an importer but an intermediate who resold the product in the Union before customs clearance. This exporting producer argued that on this basis the conclusions reached in recital 37 of the provisional Regulation, that is that the transfer price between related companies was not at a level that could allow the related importers to make a reasonable profit in the Union, would therefore not be applicable.

(15) At the outset, it should be noted that the mere fact of association between the exporter and the importer is enough to enable the Commission to treat the actual export prices as unreliable because the existence of association between the exporter and the importer is one of a number of reasons for which the actual export prices may regarded as unreliable. Due to the association between supplier and importer, prices charged by a supplier to its related company in the Union are transfer prices which are not the result of arm's length negotiations which normally prevail between independent companies. Moreover, it is clear that costs entailed by the activities of a related company and a profit margin such a company achieves effectively reduce the amount received by the exporting producer in as much as they are normally incurred by the importer.

(16) In addition, in the current case the investigation revealed that the relevant related companies did not realise a sustainable profit margin in the Union. In this respect, it should be first noted that the profit margin of an unrelated cooperating importer could not be used as it was confidential and could thus not be disclosed to competitors. Therefore, a profit margin which was used in a previous proceeding concerning another chemical product manufactured by a similar industry and imported to the Union under similar circumstances as in the present case was used [1] as a benchmark. This profit margin is the most objective basis available for the purpose of arriving at a satisfactory estimate of an arm's length export price. This reasonable profit margin used was at 5 %. As the profit realised by related companies in the Union is significantly lower than this threshold, and in light of the unsustainable nature of such profit, the transfer price could not be considered as reliable.

(17) Moreover, positive evidence that cross-compensation or certain costs incurred and normally borne by an importer but paid by any party have indeed taken place between the related companies is not necessarily required. As mentioned above, these costs are always incurred by a related company as soon as such a company is performing selling and importing functions. As a consequence of the association between the related companies, the existence of cross-compensation via other products or such costs cannot be excluded and therefore the transfer prices are unreliable.

[1] Commission Regulation (EU) No 1036/2010 of 15 November 2010 imposing a provisional anti-dumping duty on imports of zeolite A powder originating in Bosnia and Herzegovina (OJ L 298, 16.11.2010, p. 27).

(18) It is also not relevant whether the related company in the Union is carrying out the full functions of an importer or indeed other functions. The relevant factor is whether the export price at the Community frontier level is reliable. As mentioned above in recital 15 the current investigation revealed that the price levels between related companies did not allow the related companies in the Union to realise a reasonable profit margin. None of the exporters provided any evidence why this profit margin would be inappropriate and therefore the claims made in this regard should be considered as unsubstantiated. The argument that one of these related companies did not perform the functions of an importer in the Union was not warranted as, as mentioned above, it is irrelevant which precise functions the company performed in the Union. Moreover, the fact that the company performed only some functions of an importer is necessarily reflected in the amount of selling, general and administrative ('SG&A') costs of the related companies but certainly not in the profit margin used. Moreover, it should be noted that the fact that certain activities are performed by the related company prior to importation does not mean that the export price may not be constructed on the basis of the resale price to the first independent customer with the necessary allowances being made pursuant to Article 2(9) of the basic Regulation.

(19) Following final disclosure, the two cooperating Indonesian exporting producers reiterated their claims regarding the determination of the export price. One exporting producer contested the findings set out in recital 15 that the mere fact of an association between the exporter and the importer is enough to enable the Commission to treat actual export prices as unreliable and claimed that this would be against Article 2(9) of the basic Regulation. Moreover, the same exporting producer claimed that the considerations set out in recital 17 that certain costs incurred by a related company as soon as such a company is performing selling and importing functions was not based on the facts of the case. Finally, this exporting producer claimed that the Commission did not address the fact that the levels of the prices to the related company and those to independent customers in the Union were similar.

(20) The other exporting producer reiterated its claim that its export price to the first independent customer at the Union frontier should be taken into account for the determination of the export price emphasising that the related company only acted as an intermediary and that among others, the customs clearance was performed by the unrelated customers in the Union.

(21) In reply to these claims it is noted that in accordance with Article 2(9) of the basic Regulation, the Commission considered that, on the basis of the facts of the case, the export prices should be constructed due to the association between the exporters and the related parties. Indeed, the investigation revealed that the relevant related parties did not realise a sustainable profit margin in the Union during the investigation period. In this regard, the function of the related company in the Union is not relevant when determining whether export prices in the present case should be constructed. In addition, as stated in recital 18 above, the fact that the related companies perform only certain functions is not an obstacle to the application of Article 2(9) of the basic Regulation but is reflected in a lower amount of SG&A to be deducted from the price at which the product concerned is first resold to an independent buyer. Finally, it is also noted that the exporting producers did not provide any new factual evidence which could revert these conclusions. Regarding the claim relating to similar price level to related and independent customers in the Union, it should be noted that this claim was addressed in recital 37 of the provisional Regulation. The investigation found that despite similar price levels with the independent customers, the transfer prices between the related companies were not at a level that could allow the related importers to make sustainable profit in the Union. Therefore, these arguments should be rejected.

(22) The arguments concerning the recourse to constructed export prices in the present investigation should therefore be rejected.

(23) The same two exporting producers claimed that, should export prices be constructed despite their arguments mentioned in recitals 12 to 14, the reasonable profit margin of 5 % used to construct the export price was overestimated and that the actual profit margin of their related companies should be used instead as prices between the related parties were at the same level as those to independent customers.

(24) On the basis of the considerations set out in recitals 15 to 18 concerning the reliability of transfer prices and profit margins of the related companies in the Union, this argument should be rejected. In any event, the allowances made for costs incurred in accordance with Article 2(9) of the basic Regulation were based on the relevant companies' own SG&A costs and reflected therefore the activities of these companies, whatever their functions. Consequently, this argument should be rejected.

(25) One of the above exporting producers claimed that, for specific transactions with a company not related to the exporting producer, the export price should have been based on the actual price paid or payable in accordance with Article 2(8) of the basic Regulation. The Commission found, however, that the sales in question were not

export sales to the Union. On this basis, the transactions concerned were excluded from the determination of the export price. Following final disclosure, the exporting producer contested this exclusion on the basis that the Commission should take into account all sales of the product concerned in the Union produced by the exporting producer. However, all the sales to the independent customer concerned were taken into account for the determination of the export price. Any subsequent transaction from this independent customer have to be disregarded because first they are not export sales within the meaning of Article 2(8) and (9) of the basic Regulation and second, there is a risk of double counting of these sales. On this basis, the exporting producer's claim was rejected.

(26) In the absence of any other comments regarding the determination of the export price, the conclusions reached in recitals 32 to 38 of the provisional Regulation are confirmed.

3. **Comparison**

(27) After provisional disclosure, the two cooperating exporting producers contested that the costs incurred to move the goods from the factory to the warehouse be considered as internal logistic costs thereby not affecting price comparability.

(28) One of the exporting producers had several distribution warehouses on the domestic market from which MSG was shipped to the final customers. This exporting producer claimed that transport cost from the factory to the warehouses should be considered as domestic freight cost and be deducted from the normal value as no such costs incurred on export sales. The other exporting producer claimed that in some cases the cost to move goods to the warehouse could be linked to a specific invoice and therefore is a direct selling expense and this cost is included in the price charged to the customers, affecting price comparability. It should therefore be deducted from the normal value.

(29) Warehouses are considered to be part of the premises of an exporting producer and only from the moment a product is in the warehouse it is ready to be sold. The distance of the warehouse from the factory is irrelevant, as well as the fact whether the transport from the factory to the warehouse can be linked to a specific domestic sales transaction as these are costs typically incurred prior to the sale and therefore not a direct selling expense having an effect on price comparability. Therefore, based on Article 2(10)(e) of the basic Regulation the claims in this regard should be rejected.

(30) After provisional disclosure, the cooperating exporting producer who exported MSG via a related company located outside the Union claimed that its export should not be adjusted under Article 2(10)(i) of the basic Regulation, as the related company outside the Union did not act as an agent and did not work on a commission basis. The exporting producer further claimed that the mark-up for the related company in question, which served as the basis for the adjustment made, does not affect price comparability because when constructing the export price, the Commission already deducted a reasonable profit margin at the level of the related company in the Union which would cover all profit margins relating to all inter-company transactions. The exporting producer claimed further that if anything, only the SG&A costs of the related company outside the Union should be deducted from the constructed export price.

(31) The investigation established that the related company located outside the Union kept a mark-up for every export sale to the Union. The mark-up affected price comparability, as it was only kept on export sales and not on sales in the domestic market. The claim that the profit margin of the related company was already accounted for when constructing the export price in accordance with Article 2(9) of the basic Regulation could not be accepted. This is because adjustments under Article 2(9) and Article 2(10) of the basic Regulation have different objectives, are separate and distinct from each other and governed by different substantive rules. Article 2(9) of the basic Regulation aims to establish a reliable export price while Article 2(10) of the basic Regulation aims to ensure comparability of the export price and the normal value. Once the export price has been duly established pursuant to paragraphs (8) or (9) of Article 2 of the basic Regulation, any further adjustments under its Article 2(10) no longer concern the export price as such and are in no way meant to determine the normal value and export price as such. Therefore, the cooperating exporting producer overlooks the purpose of the adjustment under Article 2(10)(i) of the basic Regulation, which is to render the price comparable to the normal value and to not determine the export price as such. Therefore, the reasonable profit margin deducted under Article 2(9) of the basic Regulation does not cover any possible mark-up realised in the same sales channel. As regards the amount to be adjusted, the adjustment made reflects the mark-up actually charged between the related companies

and thus actually affecting prices and price comparability. There is thus no reason to replace it with another theoretical amount. Finally, the Commission is entitled to have regard to the fact that the related company located outside the Union is receiving payment (in the form of the mark-up retained by the related company on sales which it invoices to customers in the Union). For the related company to qualify as a firm subject to corporate tax in the country located outside the Union (which has a considerably lower corporate tax rate than in Indonesia) on those payments, it must be carrying out a genuine economic activity there. As such, the Indonesian exporting producer cannot simultaneously seek to ensure the favourable fiscal treatment it obtains from the presence of the related company in the country outside the Union and the latter's economic activity in that jurisdiction while simultaneously contending in the context of anti-dumping proceedings that the related company carries out no economic activities. Therefore, these claims should be rejected.

(32) After final disclosure, the exporting producer reiterated its claims regarding the mark-up adjustment of its related company and contested that tax considerations should be placed in the context of an anti-dumping investigation. The exporting producer further claimed that while it does not contest that its related company had commercial activities in the third country concerned, these were limited regarding the product concerned. Moreover, it was reiterated that the related company's activities were clearly different from those of an agent and did not receive any commission from the exporting producer regarding the sales to the Union. Finally, the exporting producer reiterated that when constructing the export price, the Commission already deducted a reasonable profit margin at the level of the related company in the Union which would cover all profit margins relating to all inter-company transactions. In this regard, the exporting producer alleged that in case of successive sales between related companies, it would be indeed the Commission's practice to deduct only the profit margin of the related company directly selling to the independent customer in the Union but not the profit margins from the other related companies on the same sales channel.

(33) It is noted that in the present case the existence of a separate tax entity can serve as an indication of significant economic activities carried out by the related party located outside the Union as such activities are required under domestic tax law. In the present case and as explained in recital 31 the Commission took into account the fact that the exporting producer concerned has a related party outside the Union with a significant economic activity and the fact that the related party outside the Union deducted a mark-up for each sales transaction of the product concerned between the related parties, thus affecting price comparability for export of MSG to the Union. Moreover, as mentioned in recital 31 the amount on which the adjustment was based reflected the actual verified mark-up charged between the related companies and therefore also reflected precisely the activities of the related company. Therefore, these arguments should be rejected.

(34) After provisional disclosure, the same exporting producer objected to the adjustment made for commissions paid on the export price claiming that they were not direct selling expenses, but paid on a monthly basis, thereby not linked to a specific sales transaction and not affecting price comparability. This exporting producer alleged that the commissions paid only had an effect between the related companies and that therefore Article 2(10)(i) of the basic Regulation would not be applicable. The exporting producer also argued that, based on the assumption that they were considered as a single economic entity with its related company, any transfer of money within this economic entity would not be an expense or revenue for this economic entity.

(35) The investigation established that according to a 'commission agreement' between the exporting producer and its related company, commissions became due when the exporting producer in Indonesia sold directly to independent customers in the Union market (instead of via its related company). The commission paid was directly linked to the net sales value. As a result, the direct relationship between the sale and the commission paid affected price comparability under Article 2(10)(i) of the basic Regulation.

(36) Finally, the assumption that the related companies were considered as a single economic entity is inaccurate. The investigation established that the exporting producer had itself a fully functional export department and there was no duplication of export-related tasks between the exporting producer and the related importer. Therefore the related company cannot be considered as an internal sales department and these arguments should be rejected.

(37) Alternatively, in the event export prices would be adjusted based on Article 2(10)(i) of the basic Regulation, the exporting producer claimed that the amount of commissions paid should also be excluded from the SG&A cost of the related company which were deducted from the resale price to the first independent customer in the Union in accordance with Article 2(9) of the basic Regulation. However, under Article 2(9) of the basic Regulation, when constructing a reliable export price all costs incurred between importation and resale should be

deducted from the resale price to the first independent customer in the Union and there is no legal basis to compensate such costs by any income as requested by the exporting producer. Moreover, the SG&A costs of the related company in the Union pertained to a different sales channel (i.e. via the related customer) than the income from commission which pertained to the sales channel to unrelated customers. Finally, the adjustment for mark-up under Article 2(10) of the basic Regulation and the determination of the export price under paragraphs (8) or (9) of the same Article 2 have different purposes and represent two different stages of the dumping analysis.

(38) Following final disclosure, the exporting producer reiterated its claims regarding the commission described in recital 35 and argued that it would be inconsistent to consider transfer prices between related parties as unreliable on the one hand and to adjust the export price based on a commission agreement between the related parties on the other hand. The exporting producer further contested the findings laid out in recital 35 that the commission paid was directly linked to the net sales value and that there was therefore a direct relationship between the sale and the commission paid thus affecting price comparability, as it was paid once per month and the details of calculation of the commission were not disclosed between parties.

(39) The exporting producer did neither substantiate further the claims nor provide any additional factual information supporting its statement that could revert the abovementioned conclusions. Therefore, the conclusions set out in recitals 35 to 37 are confirmed.

(40) After provisional disclosure, one exporting producer claimed an adjustment should be made on the normal value for promotional and incentive costs. The exporting producer argued that these costs did not incur on export sales to the Union while they had a direct impact on the domestic sales price. In support of this argument, the exporting producer claimed that at least in certain cases these costs could be traced to specific domestic sales transactions. Finally, this exporting producer argued that promotional and incentive costs reflected the different levels of trade on the domestic market (where MSG was sold directly to retailers) on the one hand and sales to the Union (which were made to traders and distributors) on the other hand.

(41) The investigation showed that promotional and incentive costs were mostly tied to client accounts and not to specific sales transactions. Incentives and promotional costs are incurred irrespective of whether the product was finally sold. In addition, the investigation revealed that the costs claimed to be linked to a specific sales transaction were in fact not reflected in the price. On this basis it was concluded that promotional and incentive costs did not affect prices and price comparability and that this claim should be rejected.

(42) One exporting producer claimed that MSG of large size crystals (mesh size) had different physical characteristics and was sold at a different level of trade when compared to MSG exported to the Union. The exporting producer argued therefore that MSG of large size crystals should be excluded from the determination of the normal value.

(43) The investigation established that several sizes of mesh existed: powder, fine, small, regular, and large. All mesh sizes are included in the product scope, as they have the same basic characteristics, end uses and are interchangeable. Therefore all product types should be included in the determination of the normal value. Furthermore, the investigation established that different mesh sizes were not cost drivers.

(44) The investigation further showed that customers on the domestic market who bought large size mesh MSG also bought other mesh sizes. There was no evidence that the price difference observed for large size mesh MSG was linked to physical characteristics or to the level of trade since it was possible to link this price difference to other elements such as customers and volumes purchased. Moreover, the exporting producer did not quantify the alleged difference in physical characteristics. Therefore the arguments made in this regard should be rejected.

(45) In the absence of any other comments regarding comparison, the conclusions reached in recitals 39 to 46 of the provisional Regulation are confirmed.

4. **Dumping margins**

(46) In the absence of any comments, the methodology used for calculating the dumping margins, as set out in recitals 47 to 48 of the provisional Regulation, is confirmed.

(47) Taking into account the exclusion of certain transactions from the determination of the export price of one exporting producer as described in recital 25, and in the absence of any further comments, the definitive dumping margins, expressed as a percentage of the CIF (cost, insurance, freight) Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
PT. Cheil Jedang Indonesia	7,2 %
PT. Miwon Indonesia	13,3 %
All other companies	28,4 %

D. **INJURY**

1. **Definition of the Union industry and Union production**

(48) Interested parties reiterated that the Commission should exclude the cooperating Union producer from the Union industry due to the non-cooperation of an exporting producer in Indonesia related to it. It was argued that the injury picture may be affected by this relationship.

(49) The parties concerned did not bring forward any new information or evidence in this respect. In particular, they did not substantiate their claim as to what extent the injury picture could have been affected. As set out in recital 53 of the provisional Regulation, in this case there is no need to exclude the cooperating Union producer from the Union industry despite its relationship with the non-cooperating exporting producer in Indonesia because this sole Union producer fully cooperated with the Commission during the investigation and was subject to a full verification. Hence, the failure by an Indonesian exporting producer to cooperate in the investigation did not have any impact on the running of the investigation. Therefore, this argument should be rejected.

(50) After disclosure, the parties concerned reiterated their argument that the cooperating Union producer should be excluded from the Union industry due to the non-cooperation of an exporting producer in Indonesia related to it. These parties argued that the non-cooperation of the related exporting producer in Indonesia could have affected the injury picture of the Union industry. In substance, they argued that prices of MSG would be negotiated on a global worldwide basis and that due to the relationship there was a risk of cross compensation consisting in lowering prices to customers in the Union market and charging higher prices in a third country market. By not cooperating with the investigation, the related exporting producer in Indonesia would deprive the Commission from the possibility to check whether cross compensation took place.

(51) The parties concerned limited themselves to raise the argument without however substantiating it with any actual evidence. In any event, as regards prices charged by the Union producer to its customers in the Union market, which were verified during the investigation, there was no indication that these prices were lowered for reasons of cross compensation. To the contrary, as mentioned in recital 100 of the provisional Regulation, imports prices from Indonesia decreased by 8 % over the period considered which exerted a price pressure on the Union market so that the Union industry could not raise its prices in line with the increase in its costs. Therefore the Union industry as a whole was forced to decrease its prices over the period considered. The argument was therefore rejected.

(52) In the absence of any other comments with respect to the definition of the Union industry and Union production the conclusions set out in recitals 50 and 51 of the provisional Regulation were confirmed.

2. **Union consumption**

(53) After provisional disclosure, one interested party claimed that the description of the development of the Union consumption in recital 55 of the provisional Regulation was incomplete. In particular, this party argued that the decrease in consumption from FY2010/2011 to FY2011/2012 was due to the fact that imports from Vietnam were replaced by cheaper imports from Indonesia and that therefore, customers in the Union, no longer expecting price increases, sold their accumulated stocks with the effect that the overall sales volume in the Union decreased.

(54) The circumstances described by the interested party concerned did not contradict as such the conclusions set out in recital 55 of the provisional Regulation that the decrease in consumption between FY2010/2011 and FY2011/2012 was mainly due to a decrease in the sales of the Union industry on the Union market. In specific, between FY2010/2011 and FY2011/2012, both the sales of the Union industry and the imports from third countries decreased. However, while total imports only decreased by 2 % (see recital 107 of the provisional Regulation) sales volume of the Union industry dropped by 16 % (recital 72 of the provisional Regulation). The decrease in sales volume from the Union industry coincided with a decrease in the Union industry's production volume as shown in the table in recital 68 of the provisional Regulation.

(55) However, as shown in the table in recital 104 of the provisional Regulation, imports from Vietnam between FY2010/2011 and FY2011/2012 increased, in contrast to what was claimed by the interested party concerned, while imports from other third countries, such as Brazil dropped by almost 60 % during the same period. The assumption that imports from Vietnam were replaced by imports from Indonesia is therefore not confirmed by the findings.

(56) Moreover, the party concerned did not substantiate its claim that users had accumulated stocks prior to the period considered and that they sold these in increased quantities when imports from Indonesia increased. These allegations could also not be confirmed during the investigation. The interested party's claims in this respect should therefore be rejected.

(57) In the absence of any other comments with respect to Union consumption, the conclusions set out in recitals 52 to 55 of the provisional Regulation were confirmed.

3. **Imports from the country concerned**

(58) In the absence of any comments concerning the imports from the country concerned, the conclusions set out in recitals 56 to 66 of the provisional Regulation were confirmed.

4. **Economic situation of the Union industry**

(59) One interested party claimed that although production volume and capacity utilisation decreased during the period considered this was only a consequence of a substantial increase before that period. This party claimed that, therefore, the decrease in the period considered was not to be considered as a negative development and would not show injury. However, only trends established during the period considered are normally taken into account when assessing the development of the injury indicators. In the present case there was no valid reason to deviate from this practice and to assess the developments of the injury indicators over an extended period. This argument should therefore be rejected.

(60) The same interested party alleged that the possible inclusion of by-products may have inflated the costs of production of the Union industry which would also have had an impact on profitability. This allegation was incorrect. The Union industry's cost of production, including by-products were subject to verification and the completeness and correctness of costs have been satisfactorily established. This claim should therefore be rejected.

(61) In the absence of any other comments concerning the development of the injury indicators, the conclusions set out in recitals 67 to 93 of the provisional Regulation are confirmed.

5. **Conclusion on injury**

(62) One interested party claimed that not all injury indicators showed a negative trend and that the existence of a negative trend in only a few injury indicators is not sufficient to conclude that the Union industry suffered material injury.

(63) Under Article 3(5) of the basic Regulation not all injury indicators must have a negative trend to conclude on the existence of injury. In addition, the claim was incorrect as the investigation has shown that almost all injury indicators showed a negative trend during the period considered. The claims should therefore be rejected.

(64) On the basis of the above and in the absence of any other comments, the conclusions set out in recitals 94 to 96 of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation were confirmed.

E. **CAUSATION**

1. **Effect of the dumped imports**

(65) One party claimed that given the findings set out in recital 66 of the provisional Regulation, that is that the weighted average undercutting margin of Indonesian imports was between 0 % and 5 % during the investigation period, these imports could not have caused the injury suffered by the Union industry as they could not have exerted any price pressure on the Union market.

(66) This allegation was not supported by the facts of the investigation. As outlined in recitals 99 and 100 of the provisional Regulation, dumped imports from Indonesia increased substantially during the period considered, both in absolute terms and in terms of market share. This increase coincided with a decrease in sales volume and market share from the Union industry. The imports in such substantial quantities forced the Union industry to lower its sales prices in order to align them with the price levels of the Indonesian imports. As a consequence the undercutting margins found were indeed low. However, at the same time the Union industry was not able to set their prices in line with the cost increase which lead to a significant decrease of its profitability during the period considered. This is confirmed by the magnitude of the injury margins found which range between 24,9 % and 47,0 % as mentioned below in recital 125. Therefore, this argument should be rejected.

(67) In the absence of any other comments as regard the effects of the dumped imports, the conclusions set out in recitals 98 to 101 of the provisional Regulation were confirmed.

2. **Effect of other factors**

2.1. *Effect of imports from China*

(68) Two interested parties alleged that, contrary to the conclusions reached in recital 103 of the provisional Regulation, Chinese imports had a negative effect on the Union industry's sales prices and contributed therefore to the material injury.

(69) In absolute terms, the volume of Chinese imports remained at low levels during the period considered as mentioned in recital 102 of the provisional Regulation. Furthermore, when taking into consideration the anti-dumping duties, import prices were at higher levels than the Union industry's sales prices and also higher than the Indonesian import prices. The allegation that Chinese imports contributed to the material injury suffered by the Union industry was, in view of the import volumes and import prices levels from China, rejected.

(70) The conclusions reached in recitals 102 and 103 of the provisional Regulation were therefore confirmed.

2.2. *Imports from other third countries*

(71) In the absence of any comments with regard to the effect of imports from other third countries, the conclusions reached in recitals 104 to 108 of the provisional Regulation were confirmed.

2.3. *Development of Union consumption*

(72) Following the provisional disclosure, one interested party claimed that the decrease in sales of the Union industry coincided with the decrease in Union consumption which was therefore the main cause of the material injury suffered by the Union industry.

(73) As set out in recital 109 of the provisional Regulation, the decrease in consumption was only 2 % while the decrease in sales of the Union industry was 17 % during the period considered. Therefore, the decrease in consumption cannot explain the much higher decrease in sales volume. In addition, imports from Indonesia increased despite the decreasing consumption. This claim should therefore be rejected.

(74) In the absence of any other comment in this regard, the conclusions reached in recital 109 of the provisional Regulation were confirmed.

2.4. *Export performance of the Union industry*

(75) In the absence of any comments regarding the effect of the Union industry's export performance, the conclusions reached in recitals 110 to 112 were confirmed.

2.5. *Alleged inefficiencies of the Union industry*

(76) Following provisional disclosure, two parties reiterated that the injury suffered by the Union industry was due to the alleged inefficiencies inherent to the Union industry's production process including the inefficient use of resources by the Union industry.

(77) These parties failed to specify the nature of the alleged inefficiencies. As laid down in recital 113 of the provisional Regulation, the investigation did not bring into light any potential inefficiency of the Union industry and the claims in this regard were rejected.

(78) Following disclosure, an interested party reiterated its claims regarding the inefficiencies of the Union Industry. In this respect the party concerned alleged that the maintenance shutdowns, the integration of its former affiliated company, the increase in labour cost and upcoming important investments and its effect on the situation of the Union industry were not investigated.

(79) In contrast to what was claimed, the abovementioned factors were indeed analysed by the Commission as set out in recitals 94 to 96 (maintenance shutdowns), recitals 89 and 90 (integration of the former affiliated company), recital 91 (labour costs) and recitals 82 and 83 (investments) below but did not point to any potential inefficiency of the Union industry. This claim was therefore rejected.

(80) In the absence of any other comments concerning the above, the conclusions reached in recital 113 of the provisional Regulation were confirmed.

2.6. *The financial crisis*

(81) In the absence of any comments regarding the effect of the financial crisis, the conclusions reached in recital 114 of the provisional Regulation were confirmed.

2.7. *Investments and EU regulatory safety requirements*

(82) Following provisional disclosure, one interested party claimed that the high level of investments made by the Union industry caused the injury. This party argued that it would be irrelevant whether investments were necessary, as only their effect on the situation of the Union industry should be analysed and in particular their effects on the profitability of the Union industry.

(83) This party did not explain to what extent the investments made by the Union industry could have had an impact on their profitability. As described in recital 116 of the provisional Regulation the investment made by the Union industry were based on reasonable business decisions and could not be considered as undue. Moreover, investment costs are depreciated over time and as such did not have any significant impact on the Union industry's profitability. The interested party's claims in this regard were therefore rejected.

(84) Following disclosure, this interested party reiterated its claims that the injury was caused by the regulatory safety requirements and the high level of investments made by the Union industry to address such requirements. They also reiterated that it would be irrelevant that these decisions were reasonable business decisions and that the analysis should only have taken into consideration the effect on the profitability. In this regard it was finally claimed that the fact that investment costs were depreciated over time was irrelevant.

(85) In contrast to what was claimed, the assessment took into consideration the effect of the investments made on the Union industry's profitability. The depreciation of investment costs is a cost factor which is relevant in the establishment of profitability and had to be therefore taken into consideration. This argument was therefore rejected.

(86) In the absence of any other comments with regard to the effects of investments and EU regulatory safety requirements, the conclusions in recitals 115 and 116 of the provisional Regulation were confirmed.

2.8. *Costs of raw materials and other costs*

2.8.1. Cost of production

(87) One interested party claimed that the profitability decreased due to the parallel increase in the cost of production in general. Therefore the injury is caused by this increase in cost of production rather than by the imports from Indonesia.

(88) As set out in recital 100 of the provisional Regulation, the cost of production increase could not be reflected in the sales price due to the price pressure exerted by Indonesian imports of MSG. The decreasing profitability was therefore mainly due to the increase in dumped imports and this argument should be rejected.

2.8.2. Integration of a former affiliated company

(89) The same interested party claimed that the effects of the integration of a former affiliated company on the profitability of the Union industry was insufficiently analysed. This party alleged that this integration had a negative impact on profitability and therefore caused the injury suffered by the Union industry.

(90) The Commission further investigated the effects of the integration of a former affiliated company on the relevant injury indicators such as cost of production, employment, investment and profitability. It is noted that the affiliated company in question was only involved in selling the product concerned. It was found that the Union industry was profitable during the financial year in which the integration took place (FY2011/2012). The following financial year (FY2012/2013), the profitability turned negative. This coincided, however, with an increase of imports volume from Indonesia which in fact doubled during the same year. On this basis, the analysis did not confirm that the integration of the former affiliated company had a significant negative impact on profitability and the claims made in this regard should therefore be rejected.

2.8.3. Labour costs

(91) Several parties claimed that the increase in labour costs caused the injury suffered by the Union industry. While the increase in overall cost was also due to the increase in labour cost during the period considered, the investigation showed that the impact of the increase of the labour cost on the total cost of production was not significant (Precise figure cannot be given for confidentiality reasons). On this basis the increase in labour cost could not be considered as having caused the material injury suffered by the Union industry and the claims made in this regard should be rejected.

(92) Following disclosure, an interested party claimed that labour cost should not be assessed in isolation, but the impact of the increase of various cost elements as a whole should have been taken into consideration.

(93) As mentioned in recitals 87 and 88, the increase of the cost of production as a whole was assessed by the Commission and therefore the argument in this regard was rejected.

2.8.4. Maintenance shutdowns

(94) Following provisional disclosure one interested party claimed that the decrease in production and sales was attributable to the maintenance shutdowns of the Union industry which, in turn, caused the decrease in sales volume. Therefore the decrease in production and sales volume of the Union industry should not be attributed to the imports from Indonesia.

(95) The investigation showed that the decrease in production between FY2012/2013 and the investigation period coincided indeed with a prolonged maintenance shutdown of the production, which was, however, only performed in an attempt to reduce the high inventories caused by the decreasing sales in the prior years within the period considered.

(96) Therefore, the decrease in production and sales was a consequence of the increase of dumped imports of MSG from Indonesia and this argument should be rejected.

(97) Following disclosure, another interested party reiterated its claim that the injury was attributable to the maintenance shutdowns and that it was irrelevant whether such shutdowns were necessary or not. The party argued that only the impact of these shutdowns on the Union industry's profitability should have been taken into consideration.

(98) As mentioned in recitals 95 and 96, the maintenance shutdowns were the consequence of decreasing sales which themselves were a consequence of the increase in dumped imports from Indonesia. Therefore, imports from Indonesia have indeed caused the maintenance shutdowns which can therefore not be assessed in isolation nor be considered as having broken the causal link between these imports and the injury suffered. The argument of the interested party concerned was therefore rejected.

2.8.5. Depreciation of the Indonesian Rupiah

(99) Following provisional disclosure one interested party claimed that the depreciation of the Indonesian Rupiah between January 2012 and January 2014 gave the exporting producers a comparative advantage unrelated to their pricing decisions. This party claimed that the impact of this factor should be investigated.

(100) In this context, it is recalled that the likely effect of the dumped imports on the Union industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Union industry's sales prices are compared, and export prices used for the injury calculations may sometimes need to be converted into another currency in order to have a comparable basis. Consequently, the use of exchange rates in this context only ensures that the price difference is established on a comparable basis. From this, it becomes obvious that in this case the exchange rate cannot be considered a factor causing injury to the Union industry because it is inseparable from the imports themselves. The argument should therefore be rejected.

2.8.6. Conclusions

(101) In the absence of any other comments with regards to the effect of costs of raw materials and other costs, the conclusions reached in recitals 117 to 120 of the provisional Regulation were confirmed.

3. **Conclusion on causation**

(102) In the absence of any other comments with regard to causation, the conclusions reached in recitals 121 to 125 of the provisional Regulation were confirmed.

F. **UNION INTEREST**

1. **Interest of the Union industry**

(103) In the absence of any comments regarding the interest of the Union industry, the recitals 127 to 129 of the provisional Regulation were confirmed.

2. **Interest of importers/traders**

(104) In the absence of any comments regarding the interest of unrelated importers and traders, recitals 130 to 132 of the provisional Regulation were confirmed.

3. **Interest of users**

(105) Following provisional disclosure, one user reiterated its claim, described in recital 140 of the provisional Regulation, according to which Union consumption of MSG is expected to increase significantly, in particular due to an EU ban on phosphates and other phosphorus compounds which will allegedly be replaced by MSG used for the non-food sector. This user further argued that the capacity of the Union industry would be insufficient to supply the increasing demand in the Union market. This party also claimed that an increase in consumption would benefit the Union industry as it would be able to increase its sales volume. The same user reiterated its claim that there would not be enough alternative sources of supply, in particular because producers in other third countries were also part of the same company group as the Union industry and are therefore not supplying the Union market.

(106) As outlined in recital 141 of the provisional Regulation, it is difficult to predict how the new regulatory framework in the Union concerning the ban of phosphates and phosphorus compounds will impact the Union industry. In particular, the party concerned did not provide any information or evidence whether and to what extent this event will boost the demand of MSG in the Union.

(107) The investigation has shown that the Union industry had spare capacity available and would be able to increase its production volume and supply an increased demand in the Union market at least partly. Total Union capacity exceeded the total consumption in the Union during the investigation period.

(108) Regarding alternative sources of supply, and as already mentioned in recital 147 of the provisional Regulation, the investigation revealed that there was production of MSG in several third countries. At the beginning of the period considered, i.e. in FY2010/2011 the market share of imports from other third countries (e.g. Brazil, Vietnam and Korea) was substantial and only decreased when low priced imports from Indonesia increased. The investigation also revealed that several third countries had suppliers who did not belong to the same group as the Union industry. Imports from other third countries could resume should the level playing field in the Union market be restored.

(109) The claims made in this regard should therefore be rejected.

(110) Further to final disclosure, the same interested party reiterated its claim that demand of MSG would significantly increase in the Union due to the future ban of phosphates and that the Union industry will not be able to supply this increasing demand in the Union. However, the party in question did not provide any new information or concrete evidence and therefore this claim was rejected.

(111) The same interested party also argued after final disclosure that the Commission did not take into account the percentage that MSG represents in the total costs of detergents. However, the party concerned did not submit any new element that would contradict the findings expressed in recitals 138 and 139 of the provisional Regulation according to which the possible impact of the measures on this company would be limited. The argument was therefore rejected.

(112) The same interested party finally argued that additional costs for non-food industry and users of the non-food products were disregarded. However it did not submit any new information or evidence and therefore this claim was rejected.

(113) Another user claimed that the impact on users of measures against Indonesia and China should be assessed collectively.

(114) The impact of both measures on users was analysed in particular in the context of the availability of alternative sources of supply in recital 147 of the provisional Regulation. As mentioned in recital 108 this analysis showed that a number of third countries had the potential to export MSG to the Union. These third countries were present on the Union market before Indonesian dumped imports entered the Union in increased quantities.

(115) It was claimed that users are unable to pass on the additional costs of an anti-dumping duty to the final consumer, given the high competitiveness on the Union finished food product market.

(116) As mentioned in recitals 135 to 137 of the provisional Regulation, regarding the food and beverage sector MSG only represented around 5 % of the total cost of the products incorporating MSG by the cooperating companies. These companies were found to be profitable. The interested party did not provide any information which would have contradicted these findings. Therefore, the conclusions set out in recital 136 of the provisional Regulation, that measures would only have a limited impact on these companies were confirmed and the claim made in this regard should be rejected.

4. **Interest of raw materials suppliers**

(117) Further to the provisional disclosure, two suppliers contested the conclusion described in recital 143 of the provisional Regulation claiming that the disappearance of the Union industry would have a significant impact on their business activity. These suppliers argued that the effect of a potential halt of the Union industry's MSG production would have a detrimental effect on their overall business, since the sugar plants cannot avoid producing a certain volume of sugar syrups and molasses, of which the Union industry is the main buyer. If sugar in these forms remains unsold, this would affect the overall efficiency of the plant in question.

(118) These claims were however not substantiated and could therefore not be taken into account.

5. Other arguments

(119) Subsequent to the provisional disclosure, one interested party reiterated its comments on the alleged dominant position of the Union industry, claiming that by imposing measures on MSG, the Union industry would have a comparative advantage on the Union market. However, no new evidence was adduced to support these claims. Therefore the conclusions reached in recital 145 of the provisional Regulation were confirmed and the claim made in this regard should be rejected.

6. Conclusion on Union interest

(120) In the absence of any other comments concerning the Union interest, the conclusions reached in recitals 126 to 148 of the provisional Regulation were confirmed.

G. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level (Injury margin)

(121) Following provisional disclosure one interested party contested the target profit used in order to determine the injury elimination level as set out in recital 151 of the provisional Regulation. This party argued that a pre-tax profit margin of 3 %-5 % would be a reasonable and market-related profit level based on the pre-tax net profit margin of MSG producers in two Asian countries realised in 2013.

(122) The profit margin used to establish the injury elimination level corresponded to the profit margin the Union industry could reasonably expect to achieve under normal conditions of competition. As mentioned in recital 151 of the provisional Regulation, dumped imports from Indonesia only started to produce effects during the third year of the period considered. Therefore it was considered reasonable to establish the profit margin by reference to the first two years of the period considered.

(123) In the absence of any other comments regarding the injury elimination level, the conclusions reached in recitals 150 to 152 of the provisional Regulation were confirmed.

2. Definitive measures

(124) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the dumping margins, in accordance with the lesser duty rule. In this case the individual duty rate of one exporting producer has been revised following provisional disclosure, as certain transactions were excluded from the determination of its export price.

(125) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
Indonesia	PT. Cheil Jedang Indonesia	7,2	(24,9-40,2)	7,2
Indonesia	PT. Miwon Indonesia	13,3	(27,9-43,6)	13,3
Indonesia	All other companies	28,4	(31,4-47,0)	28,4

(126) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imported product concerned produced by any other company not specifically mentioned with its name and address in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(127) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([1]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

(128) To minimise 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 the Annex. Imports not accompanied by that invoice will be subject to the anti-dumping duty applicable to 'all other companies'.

(129) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies will apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

3. **Definitive collection of the provisional duties**

(130) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected.

(131) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of monosodium glutamate, currently falling within 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 in the table shall be as follows:

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

3. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex. 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

The amounts secured by way of the provisional anti-dumping duties pursuant to Implementing Regulation (EU) No 904/2014 shall be definitively collected.

([1]) European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, BELGIUM.

Article 3

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, 21 January 2015.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

— the name and function of the official of the entity issuing the commercial invoice,

— the following declaration:

'I, the undersigned, certify that the (volume) of monosodium glutamate sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in Indonesia. I declare that the information provided in this invoice is complete and correct.'

Date and signature