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

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1427

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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)] ('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[(2)] ('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[(3)], 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[(4)], a definitive anti-dumping duty on imports of MSG originating in Indonesia.

(4) On 21 January 2020, the Commission initiated an expiry review[(5)], 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

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make such imports subject to registration. The request was lodged by the sole Union producer of MSG, Ajinomoto Foods Europe SAS ('the applicant').

(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[6] ('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[7] 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 $C5H8NaNO4 \cdot H_2O$, 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.

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

(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.

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(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[8] 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.

(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'[9], from the PRC to the Union as recorded in Global Trade Atlas or 'GTA'[10] 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**