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

COMMISSION IMPLEMENTING REGULATION (EU) 2015/84

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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.

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(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 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.

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(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[(3)] 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.

(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

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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

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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.