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

COUNCIL REGULATION (EC) No 1187/2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EC) No 492/2008[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of monosodium glutamate (MSG) originating in the People's Republic of China (PRC).

1.2. Subsequent procedure

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(3) The Commission continued its investigation with regard to Community interest aspects and carried out an analysis of information provided by some users and suppliers in the Community after the imposition of the provisional anti-dumping measures.

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

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(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of MSG originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(6) It is recalled that the investigation of dumping and injury covered the period from 1 July 2006 to 30 June 2007 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from April 2004 to the end of the IP ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

(7) In the absence of any comments concerning the product concerned and the like product, recitals 12 to 14 of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Application of Article 18 of the basic Regulation

(8) In the absence of any comments concerning the application of Article 18 of the basic Regulation to one exporting producer in the PRC, recitals 15 to 18 of the provisional Regulation are hereby confirmed.

3.2. Market economy treatment (MET)

(9) Following the provisional disclosure, the two Chinese exporting producers which were not granted MET contested the provisional findings.

(10) In the case of the first company it was submitted that, in its opinion, International Accounting Standard (IAS) only required the preparation of consolidated accounts and did not require the consolidated accounts to be audited in line with IAS.

(11) In this regard, it should be recalled that, despite several requests, this company did not provide the relevant consolidated financial statements, including the auditors' report neither in its MET claim form nor during the on-spot visit in the PRC. The IAS state and explain internationally agreed accounting principles and provide guidance as to how they should be applied. Performing an audit of accounting records in line with IAS means that the audit ensures that the accounting records were prepared and presented in line with IAS and that they comply therewith. In case of a breach of such principles, the audit report should mention the impact of the non-compliance and the reasons why IAS principles were not applied. IAS 27, in particular, clearly states the conditions under which firms should prepare and present their consolidated accounts. The company does not contest that these conditions were applicable to it in the context of the MET investigation.

(12) Article 2(7)(c) second indent of the basic Regulation clearly provides that firms applying for MET should have basic accounting records which are independently audited in line with IAS and applied for all purposes. It thus seems clear that accounts should not only be prepared but also audited in line with IAS. The absence of an audit in

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line with IAS does not allow the Commission to establish whether or not the accounts were prepared in line with IAS. On this basis alone it could not be concluded that criterion two was fulfilled.

(13) The same exporting producer further claimed that in its view the offsetting of revenues and expenses was not of material nature and that the non-disclosure could not influence the economic decision of users taken on the basis of the financial statements. Therefore there was no violation of IAS.

(14) This claim however seems to contradict the first one that accounts should be prepared but not audited in line with IAS. If this were the case, the firms themselves, and not competent and independent auditors as required in Article 2(7)(c), would assess whether or not offsetting might not be forbidden, if revenues and expenses were not of material nature, if such offsetting could not influence the economic decision of users and if such offsetting detracts from the ability of users to understand the transactions undertaken.

(15) Moreover, while it has to be accepted that the notion 'materiality' leaves room for interpretation, paragraph 30 of IAS 1 provides that an item that is not sufficiently material to warrant separate presentation on the face of the financial statements may nevertheless be sufficient material that it should be presented separately in the notes. Therefore, in view of the fact that the offsetting was not mentioned in the audit report nor in the notes to the financial statements of the company it is confirmed that the accounts of the company were not audited in line with IAS.

(16) In addition, the offsetting in question were those found by the Commission investigators. Only an in-depth audit would have revealed if there were no other cases where accounts were not prepared and audited in line with IAS. In the absence of such an audit, the Commission does not have the material time, nor is it the purpose of the on-spot visit, to audit the accounts and the presentation of the accounts of the companies. Therefore, findings of the Commission which point to the fact that firms, claiming MET, fail to meet the requirement of the basic Regulations to prepare accounting records and ensure that the accounts are prepared and audited in line with IAS leads to the conclusion that criterion two is not fulfilled.

(17) Finally, the same company disagreed with the conclusion that a negative working capital together with interest-free borrowings has to be considered as a distortion carried over from the former non-market economy system but rather a sign of managerial efficiency.

(18) It should firstly be noted that the findings relating to the negative working capital were subsidiary findings and were not the main ones leading to the conclusion that the applicant did not fulfil the MET criterion. Secondly, a negative working capital alone can be a sign of managerial efficiency but only in a business with low inventory and low accounts receivable, which basically can only be found in enterprises operating on an almost cash-only basis, such as department stores and supermarkets. The analysis of the situation of this Chinese exporting producer, however, was completely different. A negative working capital has to be considered rather as a sign that a company may

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be facing bankruptcy or serious financial trouble. Under such circumstances, being able to receive huge amounts of 'trade credits' without any financial cost would be highly unlikely in market economy conditions. Therefore, the significant interest-free borrowings of the company which represented a significant share of its total short term liabilities (the latter representing 80 % of total liabilities) and which resulted to a significant level of negative working capital has to be considered as not in line with market economy behaviour.

(19) In the case of the second company, no new arguments were provided which alter the provisional findings on MET. In particular, it has been confirmed that the influence of the State-owned shareholder on the decision making process of the company was disproportionately high and that the State agreed to reduce the established value of the land use rights by 50 % without any compensation. It was also confirmed that the accounts of the company were not audited in line with IAS.

(20) In the absence of any other comments concerning MET, recitals 19 to 26 of the provisional Regulation are hereby confirmed.

3.3. Individual treatment (IT)

(21) One interested party claimed that anti-competitive practices and State interference would encourage circumvention of the measures and therefore none of the Chinese producers should be granted IT.

(22) However, this interested party did not provide any evidence as to how such allegedly anti-competitive practices and alleged State interference would permit circumvention of measures. Moreover, the investigation revealed that any theoretical State interference would be only possible via the China Fermentation Industry Association of which both exporting producers are members. However, all decisions and recommendations taken by this Association were of a non-binding nature. Therefore, this claim had to be rejected.

(23) In the absence of any other comments with regard to IT, recitals 27 to 29 of the provisional Regulation are hereby confirmed.

3.4. Normal value

3.4.1. Analogue country

(24) One interested party contested the choice made by the Commission to use Thailand as analogue country and, in particular, the producer Ajinomoto Thailand, which is related to the Community producer. However, the arguments and remarks by this party were submitted after the specific time limit set for submitting comments[3], but more importantly they were provided without any substantiation. Therefore, these comments had to be disregarded.

(25) In the absence of any other comments concerning the analogue country, recitals 30 to 34 of the provisional Regulation are hereby confirmed.

3.4.2. Methodology applied for the determination of normal value

(26) One Chinese exporting producer claimed that an adjustment for the differences in the costs of raw material should be made. In particular this exporting producer alleged that MSG produced from molasses as it is the case in the analogue country was more costly than MSG produced from corn or rice starch.

(27) However, it appeared that the Chinese exporting producer significantly overstated the ratio between the input of molasses and the output of MSG in comparison of what was found and verified at the cooperating producer in the analogue country. Accordingly, the claim that it was more costly to produce MSG in the analogue country had to be rejected.

(28) In the absence of any other comments concerning the methodology applied for the determination of normal value, recital 35 of the provisional Regulation is hereby confirmed.

3.5. Export price

(29) In the absence of any comments concerning the export price, which would alter the findings at the provisional stage, recitals 36 and 37 of the provisional Regulation are hereby confirmed.

3.6. Comparison

(30) In the absence of any other comments concerning the comparison, recitals 38 and 39 of the provisional Regulation are hereby confirmed.

3.7. Dumping margins

(31) For the companies granted IT, the weighted average normal value was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Articles 2(11) and (12) of the basic Regulation.

(32) On this basis, the definitive dumping margins expressed as a percentage of the CIF Community frontier price, duty unpaid, are:

— Fujian Province Jianyang Wuyi MSG Co. Ltd: 36,5 %,

— Hebei Meihua MSG Group Co. Ltd

and Tongliao Meihua Bio-Tech Co. Ltd: 33,8 %

(33) The basis for establishing the country-wide dumping margin was set out in recital 42 of the provisional Regulation, which, in the absence of any comments, is hereby confirmed. On this basis the country-wide level of dumping was established at 39,7 % of the CIF Community frontier price, duty unpaid.

4. INJURY

4.1. Definition of the Community industry

(34) In the absence of any comments concerning the definition of the Community industry, recitals 44 to 46 of the provisional Regulation are hereby confirmed.