Commission Regulation (EC) No 492/2008 of 3 June 2008 imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 5 September 2007, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Union*[(2)], the initiation of an anti-dumping proceeding with regard to imports into the Community of monosodium glutamate (MSG) originating in the People's Republic of China (PRC or country concerned).

(2) The proceeding was initiated as a result of a complaint lodged on 23 July 2007 by Ajinomoto Foods Europe SAS representing 100 % of the total Community production of MSG. The complaint contained prima facie evidence of dumping of the said product and of material injury suffered by the sole Community producer resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users known to be concerned, and representatives of the countries concerned of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) The complainant, exporting producers, importers, supplier associations and users made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 492/2008. (See end of Document for details)*

(5) In the notice of initiation, the Commission indicated that in view of the apparent large number of exporting producers in the PRC and importers in the Community, sampling may be applied in this investigation. However, given the lower than expected number of exporting producers in the PRC and importers in the Community which indicated their willingness to cooperate, it was decided that sampling was not necessary.

(6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and the authorities of the PRC.

(7) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation, namely to the sole Community producer, 22 importers and 27 users of the product concerned as well as two raw materials suppliers.

(8) Replies were received from the complainant Community producer, three unrelated importers, four users, and two suppliers.

(9) With regard to the country concerned by this investigation, the Commission received replies from three exporting producers in the PRC.

(10) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Producer located in the Community*

— Ajinomoto Foods Europe SAS, Nesle, France and its related trader Ajinomoto Foods Deutschland, Hamburg, Germany.

(b) *Community user*

One user requested in terms of Article 19 of the basic Regulation that their details are not published, as to do so would have a significantly adverse effect upon them. The request was found to be sufficiently substantiated and therefore granted.

— Nestlé, Vevey, Switzerland,

— Unilever, Neuhausen, Switzerland.

(c) *Importers in the Community*

— Omya Peralta GmbH, Hamburg, Germany,

— Helm AG, Hamburg, Germany,

— Standard Sp. z o.o., Lublin, Poland.

(d) *Exporting producers and related companies in the PRC*

1. Meihua Group

— Hebei Meihua MSG Group Co., Ltd, Bazhou, Hebei,

— Tongliao Meihua Bio-Tech Co., Ltd, Tongliao, Neimenggu, Inner Mongolia,

— Tongliao Jianlong Hyperacidity Co., Ltd, Tongliao, Neimenggu, Inner Mongolia,

— Langfang Jianlong Hyperacidity, Bazhou, Hebei;

2. LingHua Group,

— Shandong Linghua MSG Incorporated Company, Jining, Shandog. Verification visits scheduled for other two companies of the group,

— Shangong Lingwei Seasoning Co., Ltd., Jining, Shandog, and

— Jining Jusheng Gourmet Powder Food Co., Ltd., Jining, Shandog had to be abandoned for the reasons explained in recitals 15 to 18;

3. Fujian Province Jianyang Wuyi MSG Co., Ltd., Jianyang, Fujian.

(e) *Producer in the analogue country*

— Ajinomoto Co., (Thailand) Ltd, Bangkok, Thailand.

1.3. Investigation period

(11) The investigation of dumping and injury covered the period from 1 July 2006 to 30 June 2007 (IP). The examination of trends relevant for the assessment of injury covered the period from April 2004 to the end of the IP (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(12) MSG exported to the Community and originating in the PRC (the product concerned) is a food additive and is mainly used as a flavour enhancer in soups, broths, fish and meat dishes and ready-made foods. It is also used in the personal care cosmetics industry. It is normally declared within CN code ex 2922 42 00.

(13) MSG is available in various packing sizes, ranging from consumer packs of 0,5 gram 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 packed in the various sizes nor for different purity grades.

2.2. Like product

(14) No differences were found between the product concerned and the MSG produced by the Community industry and sold on the Community market. The PRC is an economy in transition and as mentioned in recitals 30 to 33 normal value had

to be established on the basis of information obtained in a market economy third country. According to the information available, MSG produced and sold on the market economy third country, has the same basic physical and chemical characteristics as MSG produced in the PRC and exported to the Community. It is therefore provisionally concluded that all types of MSG are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Application of Article 18 of the basic Regulation

(15) In the case of one exporting producer it was found, during the first day of the on-the-spot verification, that it had submitted falsified information relating to its export sales which were considered as false and misleading information in the sense of Article 18(1) of the basic Regulation.

(16) In view of this finding, the verification was ceased and the company was informed that pursuant to Article 18 of the basic Regulation, it was envisaged to base the findings (provisional or definitive, affirmative or negative) on facts available and was given an opportunity to comment.

(17) The company in its response did not contest the findings of the investigation concerning the falsification of documents and did not raise any objection regarding application of Article 18 of the basic Regulation.

(18) Under these circumstances, the information provided by this exporting producer was disregarded and facts available were used.

3.2. Market economy treatment (MET)

(19) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

1. business decisions and costs are made in response to market conditions, and without significant State interference;

2. firms have one clear set of basic accounting records which are independently audited, in line with International Accounting Standards (IAS) and applied for all purposes;

3. there are no significant distortions carried over from the former non-market economy system;

4. legal certainty and stability is provided by bankruptcy and property laws;

5. currency exchanges are carried out at the market rate.

(20) Three Chinese exporting producers requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines.

(21) For one Chinese exporting producer Article 18 of the basic Regulation had to be applied (see recitals 15 to 18).

(22) The verification established that the remaining two Chinese exporting producers did not meet all five MET criteria.

(23) The verification established that one Chinese exporting producer (Meihua Group constituted of five companies) could not show that it met criteria 2 and 3 mentioned above. Firstly, Meihua Group failed to present audited consolidated financial statements, in line with IAS 27, in its MET claim or during the verification visit. The investigation showed that, as there were many transactions within the Group, only audited consolidated financial statements, whereby all intra-Group balances, transactions, income, and expenses are eliminated in full, would allow obtaining a clear picture about the Group. Meihua Group only provided audited consolidated financial statements well after the verification visit which did not allow the Commission to perform any verification of the information contained in these accounts nor to obtain a clear picture about the financial situation of the Group. Moreover, it was found that the accounts of the individual companies were not in compliance with IAS 1 and IAS 18, as the mother company was offsetting revenues and expenses and that this offsetting was of material nature. In view of these breaches of IAS and the fact that they were not even mentioned in the audit reports, it is considered that Meihua Group did not demonstrate that its records were audited in line with the said standards (criterion 2).

(24) Secondly, on the basis of the individual accounts of the companies of the Group verified during the verification visit and on the basis of the unverified information mentioned above, significant distortions in the financial situation of the companies and of the Group were detected. Significant amounts of interest-free borrowings were found to exist. This resulted in a significant amount of negative working capital and in potential high financial costs not reflected in the records of the individual companies or the Group (criterion 3).

(25) The second company, Fujian Province Jianyang Wuyi MSG Co., Ltd, could not show that it met criteria 1 to 3. Firstly, its decisions were not made in response to market signals and without significant State interference, notably because the State was over-represented in its Board and because the company had certain dubious, yet significant in amount, transactions with State-owned enterprises (loan with the State with interest twice above the market rate, advances to State-owned enterprises without any justification) (criterion 1). Secondly, it did not substantiate that it had one clear set of basic accounting records which were prepared and audited in compliance with IAS, because the accounts were found not to be in compliance with IAS 1 and IAS 18 as the company was offsetting (i) accounts payable with accounts receivable and (ii) revenues and expenses. Both types of offsetting which were of material nature reduced in this way the ability to understand the transactions, other events and conditions that have taken place in the activity of the company. As these breaches of IAS were not mentioned