



C-560-827
Investigation
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March 4, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
for Deputy Assistant Secretary *for* *SM*
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Negative
Countervailing Duty Determination in the Countervailing Duty
Investigation of Monosodium Glutamate from Indonesia; and
Preliminary Negative Determination of Critical Circumstances in
the Countervailing Duty Investigation

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of monosodium glutamate (MSG) in the Republic of Indonesia (Indonesia), as provided in section 703 of the Tariff Act of 1930, as amended (the Act). We further preliminarily determine that critical circumstances, as provided in section 703(e)(1) of the Act and 19 CFR 351.206, do not exist with respect to imports of subject merchandise from Indonesia.

II. BACKGROUND

A. Initiation and Case History

On September 16, 2013, Ajinomoto North America Inc. (Petitioner) filed a petition with the Department seeking the imposition of countervailing duties (CVD) on MSG from, *inter alia*, Indonesia.¹ Supplements to the petition and our consultations with the Government of Indonesia

¹ See Countervailing Duty Petitions on Monosodium Glutamate from the People's Republic of China and the Republic of Indonesia, (September 16, 2013).



(GOI) are described in the Initiation Checklist.² On October 31, 2013, the Department initiated a CVD investigation on MSG from Indonesia.³

We stated in the Initiation Notice that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. On October 25, 2013, the Department released the CBP entry data under administrative protective order. On December 3, 2013, the Department postponed the preliminary determination until March 3, 2014, in accordance with section 703(c)(1)(A) of the Act.⁴ Due to the closure of the Federal Government in Washington, DC on March 3, 2014, the Department reached this determination on the next business day (i.e., March 4, 2014).⁵

On December 11, 2013, we selected PT Cheil Jedang Indonesia (CJ) and PT Cheil Samsung (Samsung) Indonesia as mandatory respondents.⁶ We sent our CVD questionnaire seeking information regarding the alleged subsidies on December 16, 2013. On January 6, 2014, CJ filed a letter indicating that Samsung merged with CJ in 2004 and is no longer an operating company.⁷

The GOI and CJ provided timely responses to the Department's questionnaires and supplemental questionnaires between January 30 and February 24, 2014. On February 11, 2014, Petitioner filed a timely allegation that critical circumstances exist with respect to imports of MSG from Indonesia, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206.⁸

B. Period of Investigation

The period of investigation (POI) is January 1, 2012, through December 31, 2012.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our Initiation Notice for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.⁹ No comments were submitted regarding the scope of this investigation.

² See "Countervailing Duty Initiation Checklist: Monosodium Glutamate from Indonesia," (October 23, 2013) (Initiation Checklist).

³ See Monosodium Glutamate from the People's Republic of China and the Republic of Indonesia: Initiation of Countervailing Duty Investigations, 78 FR 65269 (October 31, 2013).

⁴ See Monosodium Glutamate from the People's Republic of China and the Republic of Indonesia: Postponement of Preliminary Determination in the Countervailing Duty Investigations, 78 FR 74115 (December 10, 2013).

⁵ See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

⁶ See Department Memorandum, "Countervailing Duty Investigation of Monosodium Glutamate from Indonesia: Respondent Selection Memorandum," (December 11, 2013) (Respondent Selection Memorandum).

⁷ See Letter to the Department, "Monosodium Glutamate from Indonesia: Notification of Prior Dissolution of PT. Cheil Samsung Indonesia and Request to Terminate the Investigation As To That Company" dated January 6, 2014.

⁸ See Letter to the Department, "Monosodium Glutamate from Indonesia: Petitioner's Critical Circumstances Allegations," (February 11, 2014) (Critical Circumstances Allegation).

⁹ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997); see also Initiation Notice.

IV. SCOPE OF THE INVESTIGATION

The scope of this investigation covers monosodium glutamate (MSG), whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this investigation regardless of physical form (including, but not limited to, substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG has a molecular formula of $C_5H_8NO_4Na$, a Chemical Abstract Service (CAS) registry number of 6106-04-3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U.

Merchandise covered by the scope of this investigation is currently classified in the HTSUS at subheading 2922.42.10.00. Merchandise subject to this investigation may also enter under HTSUS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry number, and UNII number are provided for convenience and customs purposes; however, the written description of the scope is dispositive.

V. RESPONDENT SELECTION

Section 777A(e)(1) of the Act directs the Department to calculate an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. However, section 777A(e)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual countervailable subsidy rate determinations because of the large number of exporters and producers involved in the investigation.

On October 25, 2013, the Department placed CBP data for the HTSUS numbers listed in the scope of the order on the record and requested comments on the data for use in respondent selection.¹⁰ Petitioners submitted comments on November 6, 2013.¹¹ No parties filed requests for voluntary respondent status. On December 11, 2013, the Department selected CJ and Samsung as mandatory respondents.¹² However, as noted above, on January 6, 2014, CJ filed a letter indicating that Samsung was no longer an operating company.

¹⁰ See Memorandum to the File “Countervailing Duty Investigation of Monosodium Glutamate from the Republic of Indonesia: Entry Data” dated October 24, 2013.

¹¹ See Letter to the Department “Monosodium Glutamate from Indonesia: Comments on CBP Data and Respondent Selection” dated November 6, 2013.

¹² See Respondent Selection Memorandum.

VI. INJURY TEST

Because Indonesia is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Indonesia materially injure, or threaten material injury to, a U.S. industry. On November 19, 2013, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of MSG from, inter alia, Indonesia.¹³

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 9.5 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.¹⁴ The Department notified the respondents of the 9.5-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department’s regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department’s regulations further clarifies the Department’s cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

¹³ See Monosodium Glutamate from China and Indonesia: Inv. Nos. 701-TA-503-504 and 731-TA-1229-1230 (Preliminary) (November 2013).

¹⁴ See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.¹⁵

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade (CIT) upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹⁶

CJ reported that it is affiliated with PT. CJ GLS Indonesia (GLS), a transport service company, through common ownership by their parent company, Korean-based CJ Cheil Jedang Corporation.¹⁷ CJ reported that for shipments of subject merchandise to the United States, GLS would be responsible for arranging the transportation from the plant in Indonesia to the U.S. port.¹⁸ CJ stated that while it does not have an ownership interest in or share directors or senior management with GLS, this company may be considered to be cross-owned through their common parent, and therefore, responded to our questionnaire on GLS’s behalf.¹⁹ Based on our review of Exhibit 1 of CJ’s February 5, 2014, questionnaire response, “List of Affiliated Companies,” and pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that CJ and GLS are cross-owned through their parent company CJ Cheil Jedang Corporation.

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the “Preliminary Calculation Memoranda” prepared for this investigation.²⁰

D. Benchmarks and Discount Rates

19 CFR 351.509(a)(2) states that when a program provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. For purposes of this

¹⁵ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

¹⁶ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

¹⁷ See CJ’s February 5, 2014 questionnaire response at page 4.

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See Department Memorandum, “Countervailing Duty Investigation of Monosodium Glutamate from Indonesia: PT. Cheil Jedang, Preliminary Calculation Memoranda,” (dated concurrently with this memorandum).

preliminary determination, and consistent with 19 CFR 351.505(a)(2)(iv), we used the 2012 annual average Indonesian lending rate from the International Monetary Fund’s International Financial Statistics to calculate the benefit CJ received under the program, “Reduction of Import Income Tax on Imported Capital Goods, Equipment and Raw Materials for Production Destined for Export (Bonded Zone Locations).”

VIII. CRITICAL CIRCUMSTANCES

On February 11, 2014, Petitioner alleged that critical circumstances exist with respect to imports of MSG from Indonesia and submitted U.S. Census Bureau import data in support of its allegation.²¹ On February 12, 2014, the Department requested from CJ, monthly shipment data of subject merchandise to the United States for the period May 2013 through December 2013.²² On February 19, 2014, CJ submitted the requested data.²³

In its Critical Circumstances Allegation, Petitioner alleges that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), including export subsidies.²⁴ Petitioner also claims that there have been massive imports of MSG in the three months following the filing of the Petition on September 16, 2013.²⁵ Petitioner provided data which it contends demonstrate that imports of subject merchandise increased by more than 15 percent, which considered to be “massive” under 19 CFR 351.206(h)(2).²⁶

Section 703(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period. When determining whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the Department limits its findings to those subsidies contingent on export performance or the use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the Subsidies Agreement).²⁷ In determining whether imports of the subject merchandise have been “massive,” 19 CFR 351.206(h)(1) provides that the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that the Department will not consider imports to be massive unless imports during the “relatively short period” (comparison period) increased by at least 15 percent compared to imports during an

²¹ See Critical Circumstances Allegation.

²² See Letter to CJ from the Department, “Countervailing Duty Investigation of Monosodium Glutamate from Indonesia: Supplemental Questionnaire,” (February 12, 2014).

²³ See Letter to the Department from CJ, “Countervailing Duty Investigation of Monosodium Glutamate from Indonesia: CJI Response to Supplemental Request for Information,” (February 19, 2014).

²⁴ See Critical Circumstances Allegation.

²⁵ See *id.*

²⁶ See *id.*

²⁷ See, e.g., Notice of Preliminary Negative Determination of Critical Circumstances: Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China, 73 FR 21588, 21589–90 (April 22, 2008) (unchanged in the final determination), and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55808, 55809 (August 30, 2002).

“immediately preceding period of comparable duration” (base period).²⁸ The Department normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later.²⁹ As stated above, the Petition was filed on September 16, 2013. Thus, for consideration of this allegation, we used the filing month and the two months prior to the filing month as the base period (*i.e.*, July 2013 through September 2013) and the three months following the filing month as the comparison period (*i.e.*, October 2013 through December 2013).

Cheil Jedang

As discussed below under “Analysis of Programs,” the Department finds that, during the POI, CJ received countervailable benefits under a program that is contingent upon export performance: Reduction of Import Income Tax on Imported Capital Goods, Equipment and Raw Materials for Production Destined for Export (Bonded Zone Locations). Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that this program is inconsistent with the Subsidies Agreement. In determining whether there were massive imports from CJ, we analyzed CJ’s monthly shipment data for the period July 2013 through December 2013. Because of the BPI nature of this shipment data, our analysis may be found in a BPI memorandum issued concurrently with these preliminary results.³⁰ These data indicate that there was not a massive increase in shipments of subject merchandise to the United States by CJ during the three-month period immediately following the filing of the Petition on September 16, 2013.³¹

All Other Exporters

With regard to whether imports of subject merchandise by the “all other” exporters of MSG from Indonesia were massive, we preliminarily determine that because there is evidence of the existence of countervailable subsidies that are inconsistent with the Subsidies Agreement (*e.g.*, CJ’s use of a program that is contingent on export performance), an analysis is warranted as to whether there was a massive increase in shipments by the all other companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h). Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period July 2013 through December 2013, using shipment data from the U.S. Census Bureau, adjusted to remove shipments reported by the only exporter actively participating in this investigation, CJ.³² Because of the BPI nature of this shipment data, our complete analysis may be found in the Critical Circumstances Analysis Memo issued concurrently with these preliminary results.³³ Our analysis of this adjusted shipment data leads us to conclude that we cannot rely on this shipment data to make a critical circumstances finding for the all other Indonesian exporters of MSG.³⁴ As a result, for this investigation, we are relying on the export behavior of sole respondent CJ as a

²⁸ See 19 CFR 351.206(h)(2).

²⁹ See, *e.g.*, Certain Oil Country Tubular Goods From India and Turkey: Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigations, 79 FR 4333 (January 27, 2014).

³⁰ See Department Memorandum, “Countervailing Duty Investigation of Monosodium Glutamate from Indonesia: Preliminary Critical Circumstances Analysis,” dated concurrently with this memorandum (Critical Circumstances Analysis Memo).

³¹ See *id.*

³² See *id.*

³³ See *id.*

³⁴ See *id.*

proxy for the all other Indonesian MSG exporters. Therefore, we also preliminarily determine that critical circumstances do not exist for all other Indonesian exporters of MSG.³⁵

IX. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

A. Program Preliminarily Determined To Be Countervailable

1. Reduction of Import Income Tax on Imported Capital Goods, Equipment and Raw Materials for Production Destined for Export (Bonded Zone Locations)

According to the GOI, this import income tax is not an import duty or tariff.³⁶ Under Article 22 of Indonesia's Income Tax Law, imports into Indonesia are subject to an income tax withholding equal to either 2.5 percent or 7.5 percent of the total import value, depending on whether the importer owns an Import Identification Number.³⁷ Specifically, when a company that is not located in a bonded zone imports merchandise, that company is required to pay a "withholding" amount for "import income tax" upon importation of capital goods, equipment or raw materials for use in the production of exported goods. Any import income tax collected (or prepaid) through this withholding is credited towards the company's total income tax payable at the end of the tax year. However, when a company imports into a bonded zone, that company is not required to pay any import income tax withholding upon entry. The GOI claims that as a result, there is no withheld or prepaid import income tax to be credited towards the bonded zone company's end of year income tax payable. Thus, according to the GOI, whether a company is subject to withholding import income tax or not, the ultimate net effect on its overall income tax liability for the year stays the same. As a result, the GOI contends that there is no revenue forgone by the government as a result of this program. The GOI further argues that any time-value-of-money benefit under this program is insignificant.

Respondent company CJ reported that it was exempted from paying withholding on this import income tax during the POI because of its bonded zone location.³⁸ We preliminarily find that such withholding exemption for companies in bonded zones constitutes a deferral of direct taxes within the meaning of 19 CFR 351.509(a)(2), according to which a benefit exists to the extent that appropriate interest charges are not collected.

As a result, we preliminarily determine this import income tax program provides a financial contribution in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act. The GOI stated that activities in a bonded zone must primarily be for export,³⁹ and record information ties this program to exportation. Therefore, the import income tax withholding exemptions are contingent upon export performance and, thus, specific pursuant to section 771(5A)(B) of the Act. Consistent with 9 CFR 351.509(a)(2), we are treating the import income

³⁵ See *id.*

³⁶ See the GOI's February 21, 2014 questionnaire response at 2.

³⁷ See the GOI's January 30, 2014, questionnaire response at 30.

³⁸ See CJ's February 5, 2014 questionnaire response at Exhibit 12.

³⁹ See the GOI's January 30, 2014 questionnaire response at 29.

tax otherwise subject to withholding, i.e., the tax amount deferred, as a government-provided loan that provides a benefit in the form of uncollected interest charges. To calculate the benefit from this program, we summed the import income tax withholding exempted for CJ during the POI on a monthly basis, applied the short-term interest benchmark discussed above in the “Subsidies Valuation” section, and summed the uncollected monthly interest for the entire POI. On this basis, we preliminarily determine a subsidy rate of 0.069 percent ad valorem for CJ during the POI.

B. Respondent Reported Not Using the Following Programs During the POI and the Record Indicates Nothing to Contradict These Claims

1. Income Tax Reduction under Article 31E
2. Tax Incentives from the Capital Investment Coordinating Board (BKPM)
3. Tax Incentives for Investment in Priority Industries
4. Preferential Treatment for Bonded Zone Locations
 - Waiver of License and Fee Requirements;
 - Reduction of Sales Taxes on Imported Capital Goods and Equipment.

X. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

XI. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.⁴⁰ Case briefs may be submitted to Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.⁴¹

⁴⁰ See 19 CFR 351.224(b).

⁴¹ See 19 CFR 351.309(d).

