Implementing Regulation of the Council (EU) No 126/2010 of 11 February 2010 extending the suspension of the definitive anti-dumping duty imposed by Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China

IMPLEMENTING REGULATION OF THE COUNCIL (EU) No 126/2010

of 11 February 2010

extending the suspension of the definitive anti-dumping duty imposed by Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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 14(4) thereof,

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

Whereas:

A. PROCEDURE

(1) Following a review investigation carried out pursuant to Article 11(2) of the basic Regulation (review investigation), the Council, by Regulation (EC) No 1683/2004[(2)], imposed a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China currently falling within CN codes ex 2931 00 99 and ex 3808 93 27 (the 'product concerned'), as extended to imports of glyphosate consigned from Malaysia (whether declared as originating in Malaysia or not) with the exception of those produced by Crop Protection (M) Sdn. Bhd. and as extended to imports of glyphosate consigned from Taiwan (whether declared as originating in Taiwan or not) with the exception of those produced by Sinon Corporation. The rate of the anti-dumping duty is 29,9 %.

(2) By Decision 2009/383/EC[(3)] (the 'suspension Decision'), the Commission suspended the definitive anti-dumping duties for a period of 9 months, with effect from 16 May 2009.

(3) On 29 September 2009 an expiry review of the measures was initiated[(4)], further to a request lodged by the Union industry.

B. GROUNDS FOR EXTENDING THE SUSPENSION

(4) Article 14(4) of the basic Regulation provides that anti-dumping measures may be suspended for a period of 9 months by a decision of the Commission on the

grounds that market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such a suspension. Article 14(4) further specifies that the suspension may be extended for a further period, not exceeding 1 year, if the Council so decides, acting on a proposal from the Commission.

(5) Following the suspension of the definitive anti-dumping duties by Decision 2009/383/EC, the Commission has continued to monitor the market situation of glyphosate, in particular with regard to import flows from the People's Republic of China.

(6) An examination of recent import flows reveals that imports from the People's Republic of China remained at low levels and even decreased after the suspension of the measures.

(7) With regard to the Union industry, it is noted that its situation has remained stable after the entry into force of the suspension on 16 May 2009. Notwithstanding a moderate decrease in production and sales of the generic product (basic product from which formulations are obtained) in direct competition with the Chinese imports, this trend is in line with the reduced consumption figures for the period between September 2008 and August 2009. Favourable unit sale prices (indicating the Union industry's shifting focus towards formulated products at higher added value) and stable costs of production enabled the industry to achieve a comfortable profit for the period between September 2008 and August 2009. On the basis of the market information currently available, it is not expected that this situation will change substantially in the short term in the event of an extension of the suspension of the measures.

(8) Due to, inter alia, a considerable amount of stocks held by producers, importers and users the market appears stable in the months following the suspension. Imports from China have decreased considerably between May and October 2009 and are lower in comparison with the period when the anti-dumping duty was in place. Against this background of decreased imports, the decreased export prices from China seen between May and October 2009 did not have a significant impact on the situation of the Union industry. Sufficient evidence is not at hand showing that imports will surge in the short term.

(9) Notwithstanding the indications given by the Union industry on increased production capacity in the People's Republic of China, current statistics do not show evidence of increased imports in the EU. Even though Chinese production capacity is likely to continue to increase in the next years, the worldwide demand is also expected to grow. In addition, the internal Chinese market consumption has increased considerably. It must also be pointed out that the actual output resulting from this capacity expansion has been limited.

(10) No indications have been found as to why the prolongation of the suspension would not be in the Union interest.

(11) In conclusion, notwithstanding a decrease in export prices from the People's Republic of China during the recent months, factors such as the low imported quantities

and the high profit levels of the Union industry indicate that the injury linked to the imports of the product concerned originating in the People's Republic of China is unlikely to resume as a result of the extension of the suspension. The continuation of the suspension will in principle be for 1 year. However, in accordance with Article 14(4) last paragraph of the basic Regulation, the measures may at any time be reinstated if the reason for suspension is no longer applicable. This might in particular be decided if it is found in the expiry review that the measures should continue.

(12) It is recalled that this analysis is without prejudice to the outcome of the current review initiated pursuant to Article 11(2) of the basic Regulation, which is subject to different legal criteria.

C. CONSULTATION OF THE UNION INDUSTRY

(13) In accordance with the provisions of Article 14(4) of the basic Regulation, the Commission has informed the Union industry of its intention to extend the suspension of the anti-dumping measures in force. The Union industry has been given an opportunity to comment and to be heard and their comments were taken into account. In particular it is recalled that in accordance with Articles 3 and 4 of the basic Regulation, the injury analysis is performed with respect to the Union industry as a whole and, as a result, the global situation of the Union industry may not necessarily reflect the situation of all individual producers.

D. CONCLUSION

(14) The Commission therefore considers that all requirements for extending the suspension of the anti-dumping duty imposed on the product concerned are met, in accordance with Article 14(4) of the basic Regulation. Consequently, the anti-dumping duty imposed by Regulation (EC) No 1683/2004 should continue to be suspended for a period of 1 year.

(15) The Commission will continue to monitor the development of imports and the prices of the product concerned. Should the situation which led to the extension of the suspension change subsequently, the Commission may reinstate the anti-dumping measures by repealing the suspension of the anti-dumping duties forthwith,

HAS ADOPTED THIS REGULATION:

Article 1

The suspension of the definitive anti-dumping duties imposed by Decision 2009/383/EC is hereby extended for a period of 1 year.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Article 3

This Regulation shall be published in the *Official Journal of the European Union*.