Council Regulation (EC) No 1683/2004 of 24 September 2004 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China

COUNCIL REGULATION (EC) No 1683/2004

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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 Articles 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In February 1998 the Council, by Regulation (EC) No 368/98[(2)], imposed definitive anti-dumping measures (the original measures) in the form of a duty of 24 % on imports of glyphosate originating in the People's Republic of China (the PRC). That Regulation was amended by Council Regulation (EC) No 1086/2000[(3)] which increased the duty to 48 % following an anti-absorption investigation pursuant to Article 12 of the basic Regulation. Subsequently, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, Council Regulation (EC) No 163/2002[(4)] extended the 48 % duty imposed on imports of glyphosate originating in the PRC to imports of glyphosate consigned from Malaysia and Taiwan (whether declared as originating in Malaysia or Taiwan or not), with the exception of those produced by one named company in each of these countries.

2. Initiation of expiry and interim review investigations

(2) Following the publication of the Notice of impending expiry of the anti-dumping measures applicable to imports of glyphosate originating in the PRC[(5)], the Commission received on 18 November 2002, a request to review these measures pursuant to Article 11(2) of the basic Regulation.

(3) The request was lodged by the European Glyphosate Association (EGA) (the applicant) on behalf of producers representing a major proportion, in this case more than 90 %, of the total Community production of glyphosate.

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(4) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry. Moreover, on the basis of the evidence contained in the request, the Commission considered that the level of the measure was not sufficient to counteract the injurious dumping practices, which justified the ex officio initiation of a full interim review of the measures encompassing all aspects of the proceeding. Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry and an interim review pursuant to Articles 11(2) and 11(3) of the basic Regulation, the Commission published a Notice of initiation of these reviews in the *Official Journal of the European Union*[6].

3. Parties concerned by the investigations

(5) The Commission officially advised the authorities of the PRC, the Chinese exporting producers, the producers, importers and users in the Community which were identified in the request as being concerned, as well as their associations, of the initiation of the investigations. 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.

(6) In view of the apparent large number of exporting producers of the product concerned in the PRC, known from the request and from the previous investigation, the use of sampling techniques for the investigation of dumping was envisaged in the Notice of initiation. Additionally, the Commission sent sampling questionnaires to importers known to the Commission services.

(7) However, only a limited number of exporting producers from the PRC made themselves known and provided, within the prescribed time-limits, the information requested in the Notice of initiation. Therefore, the use of sampling techniques was not considered necessary insofar as exporting producers in the PRC were concerned. Additionally, only one importer reported imports of glyphosate originating in the PRC. Therefore, the use of sampling techniques was not considered necessary as far as importers were concerned.

(8) The Commission sent questionnaires to the parties known to be concerned and received replies from four Community producers and two Chinese exporting producers. One importer reported imports originating in the PRC and subsequently submitted a reply to a full questionnaire.

(9) A number of exporting producers in the PRC, four producers and 13 suppliers located in the Community as well as an association of distributors and users, made their views known in writing. All parties who so requested within the prescribed time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

(10) The Commission sought and verified all information it deemed necessary for the determination of whether there was a likelihood of a continuation or recurrence of

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injurious dumping and for the assessment of Community interest. Verification visits were carried out at the premises of the following companies:

Exporting producers in the PRC:

— Zhejiang Xinan Industrial Group Ltd, Xinanjiang, Jiande City, Zhejiang Province, the PRC;

Producers in the Community:

— Cheminova Agro A/S, Lemvig, Denmark, (including also the related distributor Headland Agrochemicals Ltd, Great Chesterford, Essex, United Kingdom),

— Herbex Produtos Químicos, SA, Sintra, Portugal,

— Monsanto Europe SA, Brussels and Antwerp, Belgium, (including also the related distributor Monsanto UK Ltd., Cambridge, United Kingdom),

— Syngenta UK, Huddersfield, United Kingdom (including also the related companies: Stauffer Chemical BV, Seneffe, Belgium and Syngenta Supply AG, Basel, Switzerland, and the related distributor Syngenta Crop Protection, Whittlesford, Cambridgeshire, United Kingdom);

Producer in the market economy third country:

— Monsanto do Brasil, São Paulo, Brazil.

(11) The investigation into the likelihood of a continuation or recurrence of dumping in the review investigations covered the period from 1 January 2002 to 31 December 2002 (the IP). The examination of trends in the context of the analysis of the likelihood of a continuation or recurrence of injury covered the period from January 1999 to the end of the IP (the analysis period).

4. Market economy treatment (MET) and individual treatment

(12) Pursuant to Article 2(7)(b) of the basic Regulation, two Chinese companies, Zhejiang Xinan Industrial Group Ltd (Xinanchem) and Zhenjiang Jiagnan Chemical Factory (Zhenjiang), requested MET and individual treatment. However, it was found that Zhenjiang had no exports of the product concerned into the Community during the IP. Therefore, the request for MET and individual treatment of Zhenjiang became irrelevant. Xinanchem was required to complete a MET claim form detailing all the relevant information required.

(13) Although the majority of the shares of the company were owned by private persons, due to the wide dispersion of the non State-owned shares, together with that fact that the State owned by far the biggest block of shares, the company was found to be under State control. Moreover, the board of directors was in fact appointed by the State shareholders and the majority of the directors of the board were either State officials or officials of State-owned enterprises. Therefore, it was determined that the company was under a significant State control and influence.

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(14) Moreover, it was established that the government of the PRC had entrusted the China Chamber of Commerce Metals, Minerals & Chemicals Importers and Exporters (CCCMC) with the right of contract stamping and verifying export prices for customs clearance. This system included the setting of a minimum price for glyphosate exports and it allowed the CCCMC to veto exports that did not respect these prices.

(15) Consequently, after consulting the Advisory Committee, it was decided not to grant MET to Xinanchem on the basis that the company did not meet all the criteria set in Article 2(7)(c) of the basic Regulation.

(16) As Xinanchem was not granted market economy status, the company applied for individual treatment, i.e. the determination of an individual dumping margin on the basis of its individual export prices. The Commission verified whether this company enjoyed, both in fact and in law, the necessary degree of independence from the State for setting its export price.

(17) In this respect, it was established that Xinanchem was subject to significant State control with regard to setting of its export prices of the product concerned as explained in recital 14. It was, therefore, concluded that Xinanchem did not meet the necessary requirements for individual treatment as set in Article 9(5) of the basic Regulation.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(18) The product concerned is glyphosate originating in the PRC (the product concerned), currently classifiable within CN codes ex 2931 00 95 (TARIC codes 2931 00 95 81 and 2931 00 95 82) and ex 3808 30 27 (TARIC codes 3808 30 27 11 and 3808 30 27 19). The product concerned is the same as in the investigation leading to the imposition of the original measures (the original investigation).

(19) Glyphosate is a non-selective herbicide which can exist in different grades or forms of concentration of which the main ones are acid, salt and formulated product. Acid is the basic form of the chemical resulting from the manufacture process and is usually found as a dry powder, with 95 % glyphosate content, or as wet cake, with 84 % glyphosate content, the difference being due only to the moisture content remaining. Salt is a soluble form of glyphosate which is made from acid. It is a liquid, normally containing 62 % IPA salt[7] content which is equivalent to a glyphosate content of 43 %. Formulated glyphosate is generally in a liquid form consisting of a mixture of glyphosate salt, water and other chemicals, such as surfactants and additives which enable the herbicide to be absorbed into the plants and improve effectiveness. The typical standard form of formulated glyphosate contains 360 grams/litre of glyphosate.

(20) In order to reduce the costs of transportation, importers normally purchase glyphosate in a concentrated form (usually acid or wet cake, but also salt) and further process (formulate) it by adding water and other chemicals in order to obtain formulated glyphosate, which is the only form that can be used as an end-product, i.e. as a non-

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selective herbicide. In view of this, importers and formulators were treated as one group (importers/formulators) for the purposes of the investigation.

2. Like product

(21) Glyphosate produced and sold in the Community by the Community producers requesting the expiry review and glyphosate produced in the PRC and sold in the Community by the Chinese exporting producers share the same basic physical, technical and chemical characteristics as well as the same uses and are therefore considered to be like products, within the meaning of Article 1(4) of the basic Regulation. It was also established that glyphosate produced and sold domestically in the market economy third country (the analogue country), i.e. Brazil, had the same basic physical, technical and chemical characteristics as well as the same uses as glyphosate produced in the PRC and exported to the Community. Therefore, they were considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

(22) Two Chinese companies cooperated in the investigations. However, only one of them (Xinanchem) had exports of the product concerned to the Community during the IP (hereafter the Chinese exporting producer). Consequently, the cooperation of the other company (Zhenjiang) was limited to the expiry review investigation. The total quantity of glyphosate originating in the PRC imported during the IP is less than 50 % of the quantity imported during the investigation period of the original investigation (12 months to end August 1995). Since consumption was increasing, the market share held by imports of the product concerned originating in the PRC decreased more significantly over the same period. From 11 % during the investigation period of the original investigation, it decreased to below 3 % at the start of the analysis period and to less than 2 % in 2001, but subsequently increased during the IP while still remaining below 2 %.

1. Analogue country

(23) Since the PRC is considered to be an economy in transition, the Commission had to determine in this case the normal value on the basis of data obtained from producers in a market economy third country, in accordance with Article 2(7) of the basic Regulation.

(24) For this purpose, the Commission suggested Brazil in the Notice of initiation which was also the analogue country used in the investigation leading to the imposition of the measures.

(25) All interested parties were given the opportunity to comment on the choice of analogue country envisaged.

(26) The Chinese exporting producer argued that a country with a more appropriate level of economic development to the PRC should be used and that an analogue country situated in Asia would offer a better point of comparison. It is to be noted that the same level of economic development is, as such, not relevant for the purpose of establishing