COMMISSION REGULATION (EC) No 1731/97

of 4 September 1997

imposing a provisional anti-dumping duty on imports of glyphosate originating in the People's Republic of China

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], as amended by Regulation (EC) No 2331/96 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 13 October 1995, the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of glyphosate originating in the People's Republic of China and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged in May 1995 by Monsanto Europe SA/NV (Belgium), with the support of Cheminova Agro A/S (Denmark), representing a major proportion of the Community production of glyphosate. The complaint contained sufficient evidence of dumping by the imports concerned and of material injury resulting therefrom to justify the initiation of an anti-dumping proceeding.

2. Investigation

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

(4) A number of producers in the country concerned as well as some Community importers and producers made their views known in writing. All parties who so requested within the above time limit were granted a hearing.

(5) The Commission sent questionnaires to the exporters and importers listed in the complaint as well as to the two complainant Community producers. Questionnaires were also sent to the national authorities of the People's Republic of China (with a view to allowing any other producer/exporter in this country to cooperate) and to those exporters who, while not listed in the complaint, made themselves known and requested a questionnaire within the limit set in the notice of initiation.

(6) The Commission received detailed replies from two Community producers, four producers in the People's Republic of China and one exporter in Hong Kong as well as from four unrelated importers in the Community.

(7) The Commission sought and verified all the information it considered necessary for a preliminary determination of dumping and injury and carried out verification visits at the premises of the following companies:

(a) *Community producers*

— Monsanto Europe SA/NV (Belgium),

— Cheminova Agro A/S (Denmark);

(b) *Unrelated importers*

— Helm (Germany),

— Calliope (France).

(8) The Commission conducted an investigation at the premises of Mobras and Nortox in Brazil, since Brazil had been selected as an analogue country for the purposes of calculating the People's Republic of China's normal value (see recitals 15 to 20).

(9) The period of investigation for the determination of dumping was 1 September 1994 to 31 August 1995 (hereinafter referred to as 'the investigation period'). The examination of injury covers the period 1991 to the end of the investigation period.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ C 266, 13. 10. 1995, p. 22.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(10) The product concerned by this proceeding is glyphosate, which is used as a herbicide in the Community, falling within CN Codes 2931 00 80 and 3808 30 27, the latter when put up in forms or packing for retail use or as preparations or articles.

(11) Glyphosate can be produced in different grades or forms of concentration: formulated (with 36 % glyphosate content), salt (with 62 %), cake (with 84 %), and acid (with 95 %). In order to reduce the costs of transportation, distributors normally purchase glyphosate in a concentrated form (usually acid, but also salt) and dilute it to obtain the formulated glyphosate, the only form which can be used as an end-product.

(12) As there are no differences in the basic characteristics (chemical composition) or properties (selective herbicide), of all above mentioned forms of glyphosate, which are all intended for the same use (herbicide), and as the transformation costs from one form to another are limited, the Commission Services found that all these forms should be considered as one product for the purposes of the investigation.

2. Like product

(13) Glyphosate produced by both the Community and the People's Republic of China for the Community market were alike in all respects within the meaning of Article 1 (4) of Regulation (EC) 384/96 (hereinafter the 'Basic Regulation').

(14) The findings made by the Commission in this respect also apply to glyphosate investigated in Brazil for the purpose of establishing normal value (see recitals 15 to 20), which is therefore a like product to the glyphosate being exported from the People's Republic of China into the Community and to the glyphosate manufactured by the Community producers.

C. DUMPING

1. Analogue country

(15) Since the People's Republic of China is considered to be a non-market economy country, the Commission had to determine the normal value on the basis of data obtained from producers in a market economy third country (the 'analogue country'), in accordance with Article 2 (7) of the Basic Regulation.

(16) As stated in the Notice of Initiation, Brazil was envisaged as an appropriate market economy third country for the purpose of establishing normal value in this proceeding.

(17) All interested parties were given the opportunity to comment on the choice envisaged. Some exporters and importers objected for several reasons which appeared after examination to be groundless.

(18) It has been argued that Brazil would be a highly protected and restrictive market for glyphosate because of high import duties (which would limit imports of the product into Brazil), restrictions on the registration of manufacturers and the existence of only two producers in the country. As a result, the price in the market would not reflect full competition, but be kept at an 'artificial level'. The import duties in Brazil for glyphosate were lower than claimed (around 13 %), which would not prevent imports of the product into that country. However, it has been found that such imports accounted for up to an 11 % share of the Brazilian market in 1995. Competition resulting from these imports as well as competition between the two Brazilian producers led to a reduction in prices of 11 % from 1992 to 1994. In this sense, it should be noted that the domestic sales volume of the Brazilian producers was representative of the Chinese exports into the Community. Finally, the allegation that the registration process would limit free competition in that market appeared to be exaggerated, given the fact that six other companies (besides the producers) had received authorization to sell glyphosate on the Brazilian market.

(19) On the allegation that the production process would be different in China and Brazil, and the latter would have poor self-sufficiency in raw material supply; it should be noted that the raw materials in both China and Brazil are amino acids, freely available on the world market, having similar properties and undergoing similar reactions resulting in exactly the same chemical product, i.e.

glyphosate. Furthermore, not only have some Chinese producers recently changed to the chemical process used by the Brazilians but, as the latter is much more cost-effective, this would be more advantageous for the establishment of normal value for Chinese production.

(20) Finally, it has been claimed that the manufacturing cost would be excessively high in Brazil, due to inflation. However, this reached manageable levels in the investigation period after the control plan undertaken by the Brazilian Government, and special attention was paid to this issue in the normal value calculation to avoid any distortion.

(21) Instead of Brazil, some exporters proposed the following analogue countries: Argentina, Australia, India, Malaysia and Taiwan. None of the exporters were able, however, to present any valid argument as to why these countries were more appropriate than Brazil. On the contrary, some exporters submitted contradictory information leading to the conclusion that the alternative analogue countries proposed were less appropriate than Brazil.

(22) For the above reasons it was concluded that Brazil was the most appropriate choice of analogue country. The Commission sought and obtained the co-operation of the two producers in the country, i.e. Mobras (related to one of the complainants) and Nortox.

2. Normal value

(23) Normal value was calculated for the two forms of glyphosate produced and sold in Brazil, i.e. glyphosate acid and formulated. Normal value was calculated on the basis of information provided mainly by the producer Mobras and, to the extent possible, on the basis of data from Nortox, which partially co-operated with the investigation. It appeared nevertheless from the information gathered that its costs of production were similar to, if not higher, than those of Mobras. Finally, the relationship between Mobras and one of the complainants was examined carefully to see that it did not affect its costs of production or selling prices.

(24) With regard to formulated glyphosate, the Commission services found that the quantity sold in Brazil was representative in accordance with Article 2 (2) of the Basic Regulation and that all domestic sales had been made in the ordinary course of trade in accordance with Article 2 (4) of the Basic Regulation. Consequently, normal value was established on the basis of the weighted average prices actually paid for all domestic sales of formulated glyphosate.

(25) As regards glyphosate acid, it was found that domestic sales were representative, but not made in the ordinary course of trade. Therefore, in accordance with Article 2 (3) of the Basic Regulation, normal value was constructed on the basis of the manufacturing costs plus a reasonable amount for selling, general and administrative costs (SGA) and for profits.

(26) In order to construct normal value, the manufacturing costs of the acid form was added to the SGA based on the total SGA of Mobras, less certain expenses which could not be incurred by sales of the acid form. Costs incurred by a related company in the US, which were claimed by Mobras as part of the acid cost of production, were not taken into account due to lack of evidence. In accordance with Article 2 (6) (C) of the Basic Regulation, and as no reliable information could be obtained from other producers of the like product, or in the same business sector, a profit margin limited to 5 % was judged not to exceed the profit normally realised by producers on sales of the same category of products in Brazil. Glyphosate acid is indeed a commodity, theoretically sold in bulk to intermediate customers, who bear the extra cost of formulation before selling it on the market to end-users.

3. Export price

(27) Five Chinese exporters co-operated with the investigation.

Four companies (Asia Pacific Agricultural Chemical (Group) Co., Citic Trading Co. Ltd., Shanghai Chemicals Import & Export Corporation, and Sinochem International Chemicals Co. Ltd.) exported the product from the People's Republic of China, while the fifth was a trader from Hong Kong (Quickett Co. Ltd.). The exports of the five companies represented a large majority of total exports of Chinese glyphosate during the period of investigation.

(28) As all co-operating exporters made export sales in the Community directly to independent importers, export prices were established on the basis of the prices actually paid or payable by these independent importers (in accordance with Article 2 (8) of the Basic Regulation).

4. Comparison

(29) In accordance with Article 2 (10) and (11) of the Basic Regulation, the weighted average normal value of each form was compared with the weighted average export price at the same level of trade and at FOB Chinese frontier/FOB Brazilian frontier level.

(30) As the large majority of exports concerned the acid and formulated forms, it was decided to base the dumping calculation on these two forms, as the remaining form (glyphosate salt), is not produced in Brazil and is only exported from the People's Republic of China in limited quantities.

(31) For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transport, insurance, handling and ancillary costs, credit costs as well as commissions in accordance with Article 2 (10) of the Basic Regulation.

5. Dumping margins

(32) The four Chinese exporters requested individual treatment. However, these companies did not meet the necessary requirements, as, in particular, the majority of the shares of the Chinese exporters did not belong to genuinely private companies. It had therefore, to be concluded that they were not independent from the State and, consequently, individual treatment could not be granted.

(33) For all co-operating exporters, the comparison revealed the existence of dumping with regard to imports of the product concerned originating in the People's Republic of China, the dumping margin being equal to the amount by which the normal value exceeded the price for export to the Community.

(34) In the absence of individual treatment for any of the companies concerned and taking into account the high level of co-operation, a single dumping margin was calculated for the People's Republic of China, which was the weighted average of the margins found for the five companies. The weighted average dumping margin expressed as a percentage of the free-at-Community frontier price, duty unpaid, is 38,2 %.

D. COMMUNITY INDUSTRY

(35) The Community producers supporting the complaint represented a major proportion of Community production of the like product. These companies (Monsanto S.A./N.V. and Cheminova Agro A/S) will be referred to hereafter as 'Community industry'.

It should be noted that there are two other producers in the Community, one of which is an important chemical group which started the production after the investigation period. These two producers expressed their support for the complaint in the course of the investigation, and their submissions were taken into account for the assessment of Community interest.

E. INJURY

1. Collection of injury data: methodology and sources

(36) For the purpose of examining injury in the present proceeding, the Commission services analysed data relating to the period 1991 to the investigation period (September 1994 — August 1995). The geographical scope of the investigation was the Community of 15 Member States.

(37) Since one of the two complainant producers started production close to the investigation period and the data prior to this period relates to the other company, some injury indicators are indexed in order to preserve the confidentiality of the data submitted by the latter.

2. Consumption in the Community market

(38) In calculating total apparent consumption on the Community market, the Commission added the sales of Community producers to the imports into the Community (Eurostat statistics).

(39) On this basis, it was found that Community consumption increased by 129 % from 1991 to the end of the investigation period. This increase in consumption can be explained partly by the expiry of a patent on the sales of glyphosate in the Community, held by one of the complainant producers. This patent expired in 1991, following which generic products entered the market, generating an increase in lower priced supply. This, together with the growing sense that glyphosate is a good quality herbicide which farmers tend to prefer over others, resulted in an increase in overall consumption.

3. Volume and market share of imports

(40) The total volume of dumped imports of glyphosate originating in the People's Republic of China increased continually and substantially from 48 tonnes in 1991 to 1 397 tonnes in the investigation period. Glyphosate of Chinese origin is sold in its three main forms, and is sold in larger quantities in some Member States than in others.

(41) The market share of the Chinese imports followed a similar progressive trend: 1 % in 1991 and 1992, 4 % in 1993, 8 % in 1994 and 11 % in the investigation period, i.e. a rapid rate of increase, particularly between 1993 and the investigation period. Imports from China accounted for more than 75 % of all imports of glyphosate into the Community in the investigation period.

4. Prices of dumped imports and undercutting

(42) For the assessment of the price undercutting during the investigation period, the Commission compared the prices of the Community industry with comparable prices for glyphosate of Chinese origin in the Member States where the majority of sales had been made. Prices were consequently compared at the formulated stage which was found to constitute the majority of sales of the Community industry and of the independent formulators using imported base product.

(43) Considering that there is a great variety of concentrations on the market and that some products contain a non-toxic type of surfactant (alkylpolyoxalkylammoniumquat) which increases their efficiency, prices of glyphosate products can vary considerably. In order to ensure a fair comparison, the Commission selected the most common formulation called '3A', which has 360g of glyphosate content per litre and no non-toxic surfactant.

(44) For the Chinese imports, the prices of formulated product obtained from Chinese acid provided by co-operating importers in the Community, together with prices provided by one Chinese exporter for formulated product were used. Comparisons made at ex-works level showed that, during the investigation period, price undercutting margins ranged from 3 % to 18 % with an overall weighted average of 12,2 %.

(45) Moreover, although no representative sales of glyphosate acid were made by the Community industry in the investigation period and prices could therefore not be compared at the acid stage, the price of acid imported from the People's Republic of China, at the Community frontier level, in the investigation period was found to be below the manufacturing cost of acid of the Community industry, i.e. at a level excluding any general, sales, administrative or other overhead costs, thus exerting a commensurate downward influence on the prices of formulated products.

5. Situation of the Community industry

(a) *Production*

(46) For a clear assessment of the injury factors below, it should be recalled that the injury determination was based on information provided by two complainant producers ('the Community industry'). Of these, one held a patent for glyphosate in the Community until 1991 whereas the other started production just before the investigation period.

The factors below should therefore be seen in the light of the expansion of the market which followed the patent expiry (see recital 38) together with the entrance in the market of a new producer just before the investigation period.

(47) The Commission found that the production of the Community industry rose, on an indexed basis, from 100 in 1991 to 293 in the investigation period. This increase in production should be seen in relation to the market expansion together with the entrance into the market of a new Community producer of glyphosate in 1994.

(b) *Capacity*

(48) Capacity of the Community industry increased, on an indexed basis, from 100 in 191 to 269 in the investigation period in the context of the market growth. The capacity utilisation rate fluctuated in the period examined and was, on a weighted average basis, 78 % in the investigation period.

(c) *Sales volume/Market share*

(49) Sales of the Community industry in the period considered rose, on an indexed basis, from 100 in 1991 to 200 in the investigation period. However, the market share of Community industry decreased continuously from 98 % in 1991, 96 % in 1992, 92 % in 1993, 87 % in 1994 to 85 % in the investigation period.

(50) The price of formulated glyphosate of the Community industry decrased by 33 % between 1991 and the investigation period on a Community-wide basis. It should be noted that in the markets where the products of Chinese origin were mostly sold, the fall in prices was even greater, reaching in some cases 49 % over the period considered.

(d) *Profitability*

(51) With regard to profitability, one producer was incurring significant financial losses. The profitability of the other producer was found to have decreased constantly during the period examined, from levels close to 13 % in 1991 to levels close to 2 % in the investigation period. In this context it should be noted that the product concerned is a high technology product which requires considerable investment in R&D, and continuous updating in terms of compliance with environmental and registration requirements. In addition, a calculation was made of the profitability of this company in the markets where the Chinese product was most present. This calculation revealed significant losses being incurred by this producer in its sales of glyphosate in certain of these markets.

(52) This finding is underlined by the analysis of import prices made in recitals 41 to 44 above in which it was found that these import prices were below the producers' manufacturing costs. This demonstrates the magnitude of the pressure exerted on the Community industry's financial results.

(e) *Employment*

(53) Employment for the product concerned increased slightly during the period examined (+4 %). During the investigation period, the Community industry employed 814 people.

(f) *Conclusion on injury*

(54) During the period examined, the Community industry's capacity, production and sales increased in the context of market expansion. However, in addition to a loss in market share, the prices and profits of the Community industry decreased considerably.

(55) Profitability was decreasing and reached low levels during the investigation period, or even, in the market most exposed to Chinese competition, losses. It should be noted that the injury factors found for the two complaining companies varied given that one was in the situation of losing considerable market share (partly due to loss of patent) while the other, being a new entrant, was gaining market share. Both, however, were showing non-sustainable financial results. In the light of the above, it was concluded that the Community industry suffered material injury during the period examined.

F. CAUSATION

1. Effects of the dumped imports

(56) The investigation has shown that dumping has had a negative impact on the situation of the Community industry. In this context, it is noted that, although the decrease in market share, prices and profits suffered by one of the complainants in the period examined can be attributed, to a certain extent, to the expiry of the patent (such developments are to be expected in all cases following patent expiry), the dumped imports have clearly and significantly exacerbated this negative trend. This conclusion is based, in particular, on the low price level of the Chinese imports of acid, which were found to be lower than the manufacturing costs of acid of both Community producers, thus putting constant downward pressure on the prices of the final formulated product in the Community.

Due to the very low price of acid as formulated in Chinese imports, the profitability of the patent holder was found to be, on average, at low levels and to be negative on certain markets where the sales of glyphosate of Chinese origin prevailed.

(57) The other complainant, which has made considerable investments to enter the glyphosate market following the patent expiry, has not been able to obtain the sales volume, the corresponding reduction in unit costs and the prices which would have led to the anticipated profits on its sales of glyphosate, due to the pressure exerted by the Chinese imports on prices.

2. Effects of other factors

Imports from other third countries

(58) Imports from other countries were found to be minimal and had consequently no significant impact on the situation of the Community industry.

3. Conclusion on causation

(59) Although factors other than dumping, such as patent expiry, may have had a negative effect on the situation of the Community industry, this does not detract from the fact that the imports of the glyphosate originating in the People's Republic of China, taken in isolation, have caused material injury to the Community industry.

(60) This conclusion is based, in particular, on the significant price pressure exerted by the Chinese imports on the Community market with a consequent significant gain in market share, resulting in a decrease of market share and losses suffered by the Community producers on their sales of glyphosate.

G. COMMUNITY INTEREST

1. General considerations

(61) Pursuant to Article 21 (1) of the Basic Regulation, the Commission examined, on the basis of all evidence submitted, the aspects pertinent to the assessment of Community interest and, in particular, the likely impact of measures on all the parties involved in the proceeding. In such an examination, it should be noted that no arguments were submitted by farmers, who are the consumers of the product, whereas a number of importers presented a joint submission.

2. Impact on the Community industry

(62) As regards the Community industry, it is considered that if the pressure exerted by the dumped imports on the Community industry is allowed to continue, the financial losses incurred during the investigation period are likely to spread and cause a further deterioration in the state of the industry. This could lead to a reduction in the production of glyphosate acid in the Community, with a consequent loss of investment and employment.

(63) It should be noted that during the investigation period there were three producers of glyphosate acid in the Community (one of which was not a complainant). Since then, another important chemical group has started to produce glyphosate acid in the Community. This group has made considerable investments in production facilities and has forecast the production of significant quantities of glyphosate which will contribute to increased competition in the Community with considerable beneficial effects on employment. However, the viability of such an enterprise is being jeopardised by the presence of the dumped imports.

(64) In this context the Commission established that the forecast of this new producer, in particular with regard to the development of prices, have proved to be inaccurate. These forecasts had taken into account the competition from Chinese imports, but the prices of Chinese imports declined much faster than anticipated.

As a result, measures would appear to be essential to ensure the continued presence of new Community producers on the glyphosate market, while safeguarding the viability of those already producing.

3. Impact on importers/formulators & consumers

(65) Since the major part of glyphosate imports from the People's Republic of China into the Community is in the form of acid or salt and is therefore resold in a formulated form, the formulating industry is concerned by this proceeding.

(66) Three importers/formulators co-operated with the Commission. They presented a submission in which they stated their position against measures because any increase in the price of their main raw material would reduce their profit margin. As most of the importers/formulators deal with a number of products other than glyphosate, the Commission considers that even if measures have the effect of increasing prices, their impact on the overall business of these companies will be limited.

(67) Moreover, the importers/formulators should not obtain advantages through dumping since this creates an imbalance *vis-à-vis* the other competitors, namely the Community glyphosate industry.

(68) As regards the consumers of the product, these are the farmers. A slight increase in the prices of the herbicide would have a minimal effect on their profitability since it is only a minor item in the overall cost of crop growing and, in any event, sources of supply other than the People's Republic of China are available, as well as other products which serve the same purpose.

(69) For the above-mentioned reasons, the Commission is of the opinion that any benefits afforded to the Community industry resulting from the imposition of measures would greatly outweigh any marginal negative impact that may result for the formulators and consumers concerned.

4. Competition in the Community

(70) The Commission examined competition in the Community carefully. It appears that until 1991, the former patent holder held almost 100 % market share in the Community. When they decided to enter the glyphosate market, the two new producers had as their target a certain market share which had therefore to be taken from the former patent holder. In making their forecast, while including a factor for increasing Chinese imports, the new entrants did not anticipate the sharp decline in Chinese prices combined with their equally sharp increase in volume. The result is that, although these companies now account for a considerable proportion of the total production capacity of the Community industry, they claim to be re-examining their projected return on investment and are inevitably considering their continued presence in this growing market. Thus, should measures not be imposed, their recent significant investments would cease to be viable and the new entrants could be forced to withdraw from the glyphosate market, with a considerable negative impact on employment and on the overall competitive situation.

(71) Furthermore, there is a likelihood that, without the imposition of measures, competition in the Community would be limited to the former patent holder and the Chinese, to the extent that the former patent holder would be able to compete with the very low prices of the Chinese. This would clearly not be in the interests of the Community, in particular because both new entrants would ensure a more effective competition on the Community market as there would be a greater number of players involved on that market. In doing so, a greater variety of reliable sources of supply for Community consumers would be maintained than would be the case if Chinese imports were the only alternative to the former patent holder products.

5. Conclusion on Community interest

(72) Given the rate of increase of imports from the People's Republic of China, in particular the substantial increase between 1993 and the investigation period, and the exporters behaviour on the Community market, i.e. constantly and significantly undercutting the prices of the Community industry and thereby gaining market share, there is a likelihood that, in the absence of measures, this trend would continue and further aggravate the injury caused to the Community industry.

(73) The Commission considers that a further deterioration of the Community industry would not be in the interests of the Community since the likely consequence would be the loss of considerable investment, much of it from new entrants. This would result in the reduction of the number of producers in the Community with a subsequent loss of employment. Measures, on the other hand, would ensure the maintenance or even an increase in the number of competitors in this newly expanding market.

(74) In the light of all the above factors, it is concluded that there are no compelling reasons why measures should not be imposed. It is, therefore, in the Community interest to impose provisional anti-dumping measures on imports of glyphosate originating in the People's Republic of China.

H. PROVISIONAL DUTY

(75) Having established that the dumped imports under consideration have caused material injury to the Community industry and that it is in the Community's interest to take action, the measures envisaged should be sufficient to eliminate the injury caused by these imports without exceeding the dumping margins found.

(76) The removal of such injury requires that the industry should be put in a position where prices can be increased and profitability improved. In order to achieve this, the prices of imports of the product concerned originating in the People's Republic of China should be increased accordingly.

(77) The product type used as a reference to determine the duty rate was the acid form because it is the common base of all forms of glyphosate exported from the People's Republic of China and produced in the Community. Acid accounts for 76 % of the manufacturing costs of the equivalent quantity of formulated product. It is therefore considered that a duty based on acid would be representative of all different forms of glyphosate imported from the People's Republic of China. Moreover, the acid form represented 67 % of the volume imported from the People's Republic of China during the investigation period.

(78) For the purposes of calculating the necessary price increase, the Commission considered that the prices of the dumped imports had to be compared with the production costs of acid of the Community industry plus a reasonable level of profit. Costs incurred by a related company in the US, which were claimed by one of the complainants as part of the costs of acid production, were not taken into account due to lack of evidence that these costs related to the production of acid in the Community. Although the profitability rate considered as normal for the formulated product was claimed to be around 15 %, the Commission took the view that a profit margin limited to 5 % represented a reasonable profit since glyphosate is a commodity, theoretically sold in bulk, to intermediate customers who bear the extra cost of formulation before selling it in the market to end users.

(79) On this basis, the weighted average of export prices for this product type, for the period of investigation, on a CIF Community frontier level, after deduction of the customs duty and of an allowance in respect of post importation costs and profit, was compared with the weighted average cost of production of the Community producers, increased by a profit margin of 5 %.

This comparison showed an injury margin of 21,1 %.

(80) Since the injury margin is lower than the dumping margin found, the provisional anti-dumping duties should be based on this lower level in accordance with the provisions of Article 7 (2) of the Basic Regulation.

On the basis of the above, a provisional anti-dumping duty of 21,1 % should be imposed on imports of glyphosate originating in the People's Republic of China.

I. FINAL PROVISION

(81) In the interest of sound administration, a period should be fixed within which interested parties known to be concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of glyphosate falling within CN codes ex 2931 00 80 (code Taric 29310080*80) and ex 3808 30 27 (code Taric 38083027*10), originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty on the basis of the net, free-at-Community-frontier price, before duty, shall be 21,1 %.

3. Unless otherwise specified, the provisions in force concerning duties and other customs practices shall apply.

4. The release of the product referred to in paragraph 1 for free circulation in the Community shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

Pursuant to Articles 20 and 21 of Regulation (EC) No 384/96 of 22 December 1995, the Parties concerned may make their views known in writing and apply to be heard orally by the Commission within one month of the entry into force of this Regulation.

Article 3

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96 of 22 December 1995, Article 1 of this Regulation shall apply for a period of 6 months unless the Commission extends its validity or the Council adopts definitive measures before the expiry of that period.

Article 4

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 September 1997.

For the Commission
Leon BRITTAN
Vice-President