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COMMISSION REGULATION (EC) No 909/2001

of 8 May 2001

initiating an investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EC) No 368/98 on imports of glyphosate originating in the People's Republic of China by imports of glyphosate consigned from Malaysia or Taiwan, and making such imports subject to registration

(OJ L 127, 9.5.2001, p. 35)

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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], as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 13(3) and Article 14(5) thereof,

After having consulted the Advisory Committee,

Whereas:

A. **REQUEST**

(1) The Commission has received a request pursuant to Article 13(3) of Regulation (EC) No 384/96 ('the basic Regulation') to investigate the alleged circumvention of the anti-dumping measures imposed on imports of glyphosate originating in the People's Republic of China.

(2) The request has been lodged on 26 March 2001 by the European Glyphosate Association (EGA) on behalf of a major proportion of Community producers of glyphosate.

B. **PRODUCT**

(3) The product concerned by the allegation of circumvention is glyphosate, which can be produced in different grades or forms of concentration of which the main ones are the following: formulated (generally with 36 % glyphosate content), salt (with 62 %), cake (with 84 %) and acid (95 %), currently classifiable within CN codes ex 2931 00 95 (TARIC code 2931 00 95 80) and ex 3808 30 27 (TARIC code 3808 30 27 10). These codes are given for information only.

C. **EXISTING MEASURES**

(4) The measures currently in force and allegedly being circumvented are anti-dumping measures imposed by Council Regulation (EC) No 368/98 [3], as last amended by Regulation (EC) No 1086/2000 [4]. This latter Regulation increased the rate of duty applicable to 48 % pursuant to Article 12 of the basic Regulation.

D. **GROUNDS**

(5) The request contains sufficient evidence that the anti-dumping measures on imports of glyphosate originating in the People's Republic of China are being circumvented by means of either transhipment via Malaysia or Taiwan or formulation in Malaysia or Taiwan of glyphosate originating in the People's Republic of China for re-export to the Community, for which there appears to be insufficient due cause or economic justification.

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[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ L 47, 18.2.1998, p. 1.
[4] OJ L 124, 25.5.2000, p. 1.

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(6) The evidence submitted is as follows:

(a) the request shows that a significant change in the pattern of trade involving exports from the People's Republic of China, Malaysia and Taiwan to the Community has taken place following imposition of measures. Imports from Malaysia and Taiwan have increased significantly while imports from the People's Republic of China have decreased substantially.

This change in the pattern of trade appears to stem from a transhipment of glyphosate originating in the People's Republic of China via Malaysia or Taiwan and also from the formulation in Malaysia or Taiwan of glyphosate originating in the People's Republic of China. The formulation is a relatively simple operation which consists of diluting glyphosate salt with water and blending it with surfactant. There seems to be insufficient due cause or economic justification for these practices other than the existence of the anti-dumping duty on glyphosate originating in the People's Republic of China;

(b) furthermore, the request contains sufficient evidence that the remedial effects of the existing anti-dumping duties on glyphosate are being undermined both in terms of quantities and price. Significant volumes of imports of glyphosate from Malaysia and Taiwan appear to have replaced imports from the People's Republic of China. In addition, there is sufficient evidence that this increase in imports is made at prices well below the non-injurious price established in the original investigation;

(c) finally, the request contains sufficient evidence which shows that dumping is taking place in relation to the normal value previously established, for imports consigned from Malaysia or Taiwan.

E. **PROCEDURE**

(7) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of glyphosate consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not, subject to registration in accordance with Article 14(5) of the basic Regulation.

(i) **Questionnaires**

(8) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to producers and exporters in Malaysia and Taiwan named in the request, to the importers in the Community and to the exporters in the People's Republic of China known to the Commission, to the authorities of the People's Republic of China, Malaysia and Taiwan. Information, as appropriate, may also be sought from the Community industry.

(9) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 in order to find out whether they are listed in the request and, if necessary, request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

(10) The authorities of the People's Republic of China as well as of Malaysia and Taiwan will be notified of the initiation of the investigation and provided with a copy of the request.

(ii) **Collection of information and holding of hearings**

(11) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that

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they make a request in writing and show that there are particular reasons why they should be heard.

(iii) **Certificates of non-circumvention**

(12) In accordance with Article 13(4) of the basic Regulation, certificates exempting the imports of the product concerned from registration or measures may be issued by the customs authorities to importers if the importation does not constitute circumvention.

(13) Since the issue of this certificate requires the prior authorisation of the Community institutions, requests for such authorisations should be addressed to the Commission as early as possible in the course of the investigation so that they may be considered on the basis of a thorough appraisal of their merits.

F. **REGISTRATION**

(14) Pursuant to Article 14(5) of the basic Regulation, imports of the product concerned should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties can be levied retroactively from the date of the initiation of this investigation on glyphosate consigned from Malaysia or Taiwan.

G. **TIME LIMITS**

(15) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— interested parties may make a written request to be heard by the Commission.

H. **NON–COOPERATION**

(16) In cases in which any interested party refuses access to or otherwise does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 384/96, concerning imports into the Community of glyphosate falling within CN codes ex 2931 00 95 (TARIC code 2931 00 95 80) and ex 3808 30 27 (TARIC code 3808 30 27 10), consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not.

Article 2

1. The Customs authorities are hereby directed, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports into the Community identified in Article 1 of this Regulation.

2. Registration shall expire nine months following the date of entry into force of this Regulation.

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3. Imports shall not be subject to registration where they are accompanied by a Customs certificate issued in accordance with Article 13(4) of Regulation (EC) No 384/96.

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4. Notwithstanding paragraph 1, imports of the product identified in Article 1 which are produced by the following companies shall not be subject to registration:

Producer	TARIC additional code
For imports consigned from Malaysia: Crop Protection (M) Sdn. Bhd., Lot 746, Jalan Haji Sirat 4 ¼ Miles, off Jalan Kapar, 42100 Klang, Selangor Darul Ehsan, Malaysia	A309
For imports consigned from Taiwan: Sinon Corporation, No. 23, Sec. 1, Mei Chuan W. Rd, Taichung, Taiwan	A310

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Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Communities*.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Communities* unless otherwise specified.

3. Interested parties may also apply to be heard by the Commission within the same 40 day time limit.

4. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for authorisation of certificates of non-circumvention must be made in writing (not in electronic format, unless otherwise specified), must indicate the name, address, e-mail address, telephone, fax and/or telephone numbers and should be sent to the following address:

European Commission
Trade Directorate-General
Directorates B and C
TERV 0/13
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 295 65 05
Telex COMEU B 21877.

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.