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COUNCIL REGULATION (EC) No 163/2002

of 28 January 2002

extending the definitive anti-dumping duty imposed by Regulation (EC) No 368/98 on imports of glyphosate originating in the People's Republic of China to imports of glyphosate consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not, and terminating the investigation in respect of imports from one Malaysian and one Taiwanese exporting producer

(OJ L 30, 31.1.2002, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 140, 30.5.2002, p. 38 (163/2002)

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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], and in particular Article 13 thereof,

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

Whereas:

A. **PROCEDURE**

1. **Existing measures**

(1) By Regulation (EC) No 368/98 [2] ('the definitive Regulation'), the Council imposed an anti-dumping duty of 24 % on imports of glyphosate originating in the People's Republic of China ('the PRC'). By Regulation (EC) No 1086/2000 [3], the rate of duty applicable was increased to 48 % pursuant to Article 12 of Regulation (EC) No 384/96 ('the basic Regulation').

2. **Request**

(2) On 26 March 2001, the Commission received a request pursuant to Article 13(3) of the basic Regulation from the European Glyphosate Association (EGA) to investigate the alleged circumvention of the anti-dumping measures imposed on imports of glyphosate originating in the PRC. The request was submitted on behalf of a major proportion of Community producers of glyphosate ('the Community industry').

(3) The request alleged that there had been a change in the pattern of trade following the imposition of anti-dumping measures on imports of glyphosate originating in the PRC as shown by a significant increase in imports from Malaysia and Taiwan while imports from the PRC had decreased substantially in the meantime.

(4) This change in the pattern of trade was alleged to stem from the transhipment of glyphosate originating in the PRC via Malaysia or Taiwan and also from the formulation in Malaysia or Taiwan of glyphosate originating in the PRC. It was claimed that the formulation was a relatively simple operation, which mainly consists of diluting glyphosate salt with water and blending it with surfactant. It was also claimed that this operation led to an increase of the shipment costs for the importers. The request concluded, consequently, that there was insufficient due cause or economic justification for these practices other than the existence of the anti-dumping duty on glyphosate originating in the PRC.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[2] OJ L 47, 18.2.1998, p. 1.

[3] OJ L 124, 25.5.2000, p. 1.

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(5) Finally, the Community industry alleged that the remedial effects of the existing anti-dumping duty on glyphosate were being undermined both in terms of quantities and price and that dumping was taking place in relation to the normal values previously established, for imports consigned from Malaysia or Taiwan.

3. **Initiation**

(6) The Commission initiated an investigation by Regulation (EC) No 909/2001 ([1]) ('initiating Regulation'). Pursuant to Article 13(3) and Article 14(5) of the basic Regulation, it directed the customs authorities to register imports of glyphosate consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not, as from 10 May 2001.

4. **Investigation**

(7) The Commission advised the representatives of Malaysia, the PRC and Taiwan of the initiation of the investigation. Questionnaires were sent to the producers and exporters in Malaysia and Taiwan named in the request, to the importers in the Community and to the exporters in the PRC known to the Commission as well as to other interested parties who came forward within the prescribed time limit. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.

(8) A number of exporting producers in Malaysia and Taiwan, as well as Community producers and importers, made their views known in writing. All parties who so requested within the above time limit, and who demonstrated that there were particular reasons why they should be heard, were granted the opportunity to be heard.

(9) No reply to the questionnaire was received from exporters of glyphosate in the PRC. Replies to the questionnaire were received within the prescribed time limits from 11 unrelated importers, three Malaysian exporting producers and one Taiwanese exporting producer that also acted as a trader. The Commission carried out verification visits at the premises of the following companies:

Malaysian exporting producers:

— Crop Protection (M) Sdn. Bhd., Klang, Selangor D.E., Malaysia,

— Kenso Corporation (M) Sdn. Bhd., Petaling Jaya, Selangor D.E., Malaysia,

— Mastra Industries Sdn. Bhd., Port Klang, Selangor D.E., Malaysia and its related exporter Agrimart Sdn. Bhd, Petaling Jaya, Malaysia;

Taiwanese exporting producer/trader:

— Sinon Corporation, Taichung, Taiwan.

5. **Investigation period**

(10) The investigation period covered the period from 1 April 2000 to 31 March 2001 ('the IP'). Data were collected from 1994 up to the IP to investigate the change in the pattern of trade.

([1]) OJ L 127, 9.5.2001, p. 35.

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B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(a) Malaysia

(11) In September 2001, namely three months after the expiry of the deadline for receipt of replies to the questionnaire, the Commission received a submission on behalf of Halex Industries (M) Sdn. Bhd. (Malaysia) and from Agrolex Private Limited (Singapore), involved as producer and exporter respectively, in the formulation of glyphosate acid in Malaysia and exports to the Community. It was claimed that the submission had already been made within the time limits provided for in the basic Regulation and the initiating Regulation. However, the Commission had no record of earlier receipt; no proof of successful transmission could be provided and it appeared that the submission had been faxed to a telephone number. Given that the submission was received at such an advanced stage of the investigation and, in addition, would have required further explanations and verification, these companies could not be considered as cooperating in the investigation and, therefore, findings in respect of them are made on the basis of the facts available in accordance with Article 18(1) of the basic Regulation.

(12) The verification visit revealed that Mastra Industries (M) Sdn. Bhd. ('Mastra Industries') was related to another company in Malaysia belonging to the Nufarm group, Nufarm Malaysia Sdn. Bhd. ('Nufarm Malaysia') and that Nufarm Malaysia was, at least, involved in imports into Malaysia of glyphosate acid originating in the PRC and in the formulation of such glyphosate acid in Malaysia. Nufarm Malaysia had stated at the beginning of the investigation that neither it nor any related subsidiary company of Nufarm Malaysia had at any time exported any glyphosate products, either directly or indirectly, to any country in the Community. In reply to this, the Commission informed Nufarm Malaysia that it was not required to fill in the questionnaire if it had not been involved in imports of glyphosate into Malaysia from the PRC or exports of glyphosate to the Community during the IP. Nufarm Malaysia subsequently merely confirmed its original statement. In its reply to the questionnaire, Mastra Industries presented the 'Mastra group' of related companies, to which it belonged, without mentioning its relationship to Nufarm Malaysia and other relationships to the Nufarm group [1].

(13) As in all anti-dumping investigations, a determination has to be made in respect of the economic entity formed by the cooperating exporting producer and all its related companies which are involved with the production and/or trade of the product concerned. This was made impossible by the absence of verified information on the corporate structure, purchases, production/processing (including costs) and sales of Nufarm Malaysia. In accordance with Article 18(4) of the basic Regulation, Mastra Industries was informed of these findings and invited to present comments and further explanations.

(14) Mastra Industries confirmed its relationship with Nufarm Malaysia and explained that the Commission reply to Nufarm Malaysia led Mastra Industries to believe that Nufarm Malaysia was not involved in any way. It should, however, be noted that (i) this reply was given on the basis of wrong information submitted by Nufarm Malaysia and (ii) the questionnaire drew attention to the necessity for all related companies involved with the product concerned to complete the questionnaire. A definition of related company was also provided in the question-

[1] Two companies related to Mastra Industries, Mastra K.K. (Japan) and Mastra Corporation Pty Ltd (Australia), were related to Nufarm (Australia) via shareholdings and directorship.

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naire. In addition, following analysis of Mastra Industries' questionnaire reply, Mastra Industries was asked to identify the shareholders of the related companies listed as being all its subsidiaries or other related companies in all countries involved directly or indirectly with glyphosate. Mastra Industries failed to disclose before the verification visit the shareholders of two of these companies, Mastra K.K (Japan) and Mastra Corporation Pty Ltd (Australia), which would have shown the relationship to the Nufarm group. Nufarm Malaysia eventually offered to provide every information required to verify that it had never exported any glyphosate products to the Community, but did not submit any supporting information, which would have been, in any case, submitted at a very advanced stage of the investigation.

(15) Given that incorrect information has been submitted and that necessary information (concerning the relationship between Nufarm Malaysia and Mastra Industries) and the questionnaire reply by Nufarm Malaysia have not been provided within the time limits provided for in the basic Regulation, findings in respect of Mastra Industries and its related companies are made on the basis of the facts available in accordance with Article 18(1) of the basic Regulation.

(16) The two exporting producers in Malaysia that cooperated accounted for less than 50 % [1] in volume and value of the total imports of glyphosate from Malaysia during the IP, as reported by Eurostat at TARIC level.

(b) Taiwan

(17) The sole Taiwanese exporting producer that cooperated in the investigation, Sinon Corporation, accounted for less than 25 % [1] in volume and value of the total imports of glyphosate from Taiwan during the IP, as reported by Eurostat at TARIC level.

2. **Product under consideration and like product**

(18) The product under consideration is, as defined in the original investigation, glyphosate 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). Glyphosate is a herbicide which can be produced in different grades or forms of concentration of which the main ones are the following: acid (generally with 95 % glyphosate content), cake (generally with 84 % glyphosate content), salt (generally with 46 % glyphosate content), and formulated (generally with 36 %, by volume, glyphosate content), the last being the only form that is used as an end product.

(19) The investigation showed that the glyphosate exported to the Community originating in the PRC and that consigned from Malaysia or Taiwan to the Community have the same basic physical and chemical characteristics and have the same uses. They are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

3. **Change in the pattern of trade**

(a) ***Cooperating exporting producers***

Malaysia

(20) The two cooperating exporting producers in Malaysia substantially increased their exports to the Community between 1998 and the IP, following the imposition of measures on glyphosate

[1] For reasons of confidentiality, precise data are not given.

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originating in the PRC. The rate of increase was even higher than that registered for the non-cooperating companies and in both cases export records showed a clear change in the pattern of trade to the Community at the beginning of 1998.

Taiwan

(21) The cooperating exporting producer in Taiwan, Sinon Corporation, re-started its exports to the Community in 1998 and these increased substantially between then and the IP.

Conclusion

(22) A change in the pattern of trade was therefore established in respect of the cooperating exporting producers and coincided in the case of both exporting countries with the entry into force of anti-dumping measures on glyphosate originating in the PRC at the beginning of 1998.

(b) ***Non-cooperating companies***

(23) As far as the non-cooperating companies are concerned, the Commission had to establish the exports to the Community on the basis of the facts available pursuant to Article 18 of the basic Regulation. Considering that the CN codes also include products other than glyphosate, it was considered that Eurostat data at TARIC level were the best information available to establish the findings in respect of exports to the Community following the imposition of the anti-dumping duty on imports of glyphosate originating in the PRC. Deductions were made in respect of the export quantities of the cooperating exporting producers [1]. Eurostat data at TARIC level were only available for full calendar years beginning from 1998. Therefore, the comparison of the share of each country in the total volume of imports of glyphosate into the Community during the original IP (September 1994 to August 1995) and the current IP was made based on Eurostat data at CN level. For the same reason, Eurostat data at CN level were used to confirm the pattern of trade over the period 1994 to the IP, which confirmed the conclusions reached with Eurostat data at TARIC level [2].

Malaysia

(24) Imports into the Community of glyphosate from Malaysia increased from 740 tonnes [3] in 1998 to 1 045 tonnes [3] of 95 % acid equivalent in the IP, reaching a peak of 1 370 tonnes [3] in 1999. The share of Malaysia in the total volume of imports of glyphosate into the Community has also increased from 2,3 % in the original IP to 5,2 % in the current IP. Analysis at TARIC level [4] showed an increased share, rising from 22 % to 29,7 %.

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[1] Analysis of Eurostat data at TARIC level was carried out after first converting quantities to 95 % acid equivalent, using the best information available, in order to allow for the different forms of concentration. Import statistics registered under the TARIC code 3808 30 27*10 were converted, using the most common 36 % glyphosate content for formulated product. For imports registered under the TARIC code 2931 00 95*80, since no information was available on the proportion of acid and salt imported and on their concentration, conversion to 95 % was limited to the quantities declared by the cooperating exporting producers and deducted from the total imports.

[2] For the analysis of Eurostat data at CN level, quantities were not converted to 95 % acid equivalent because this was considered unreliable given that the CN codes include products other than glyphosate.

[3] Real figures have been amended by a certain percentage to preserve confidentiality.

[4] The volume in the original IP was established by applying to the quantities registered at CN level the ratio of quantities at CN level/quantities at TARIC level for 1998 and converting to 95 % acid equivalent.

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(25) Eurostat data at CN level for the period 1994 to the IP show, at the beginning of 1998, a marked change in the pattern of trade from a slow increase to a significant increase, similar to that observed at TARIC level.

Taiwan

(26) Imports into the Community of glyphosate from Taiwan increased from 36 tonnes [1] in 1998 to 922 tonnes [1] of 95 % acid equivalent in the IP, reaching a peak of 1 335 tonnes [1] in 2000. The share of Taiwan in the total volume of imports of glyphosate into the Community has also increased from 0,8 % in the original IP to 3 % in the current IP. Analysis at TARIC level [2] showed an increased share, rising from 1,4 % to 19,7 %.

(27) Eurostat data at CN level for the period 1994 to the IP shows, at the beginning of 1998, a marked change in the pattern of trade from a slow decrease to a significant increase, similar to that observed at TARIC level.

The PRC

(28) From the imposition of the measures, the share of the PRC in the total volume of imports of glyphosate into the Community has decreased from 24,6 % in the original IP to 8,5 % in the current IP. Analysis at TARIC level [2] showed a decreased share, changing from 24,6 % to 11,9 %, and an even more substantial decrease, from 19,9 % to 1,5 %, if imports under the normal customs regime (subject to the payment of the anti-dumping duty) are exclusively considered, since most imports were made under inward processing regimes.

(29) Export statistics from the PRC at a level equivalent to CN level show, for glyphosate not put up for retail sale, a substantial increase between 1997 and the IP of the exports to Malaysia (from an index of 100 to 171) and Taiwan (from an index of 100 to 187).

Conclusion

(30) A change in the pattern of trade was therefore established in respect of the non-cooperating companies and coincided, in the case of both exporting countries, with the entry into force of anti-dumping measures on glyphosate originating in the PRC at the beginning of 1998.

4. **Insufficient due cause or economic justification**

(a) ***Cooperating exporting producers***

Malaysia

(31) Crop Protection (M) Sdn. Bhd. ('Crop Protection') transformed purchased glyphosate acid, part of which was originating in the PRC, into salt or formulated products. However, their purchases of PRC-origin acid increased less significantly than their purchases of non-PRC-origin acid and did not show a constant movement (plunge in 1998, increase up to 2000, decrease within the IP). Moreover, most of the supply of PRC origin acid was caused by Monsanto (M) Sdn. Bhd. (Malaysia) [3] due to its inability to supply Crop Protection with the US origin acid it had ordered. Direct purchases from another supplier in the PRC were minor. Additionally, to satisfy customers' requests, Crop

[1] Real figures have been amended by a certain percentage to preserve confidentiality.

[2] The volume in the original IP was established by applying to the quantities registered at CN level the ratio of quantities at CN level/quantities at TARIC level for 1998 and converting to 95 % acid equivalent.

[3] Related to Monsanto Europe, one of the complainants.

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Protection limited the use of acid originating in the PRC for production of glyphosate exported to the Community. It was therefore considered that Crop Protection reasonably established that the imposition of the anti-dumping duty on glyphosate originating in the PRC did not drive the change in its pattern of trade.

(32) Kenso Corporation (M) Sdn. Bhd. ('Kenso Corporation') transformed glyphosate acid exclusively supplied from the PRC into salt or formulated products. Kenso Corporation advanced arguments to justify economically the formulation in Malaysia of PRC origin acid. These arguments related to the low know-how in the PRC and cost efficiency in Malaysia. However, this did not explain why Kenso Corporation started to sell to a customer for export to the Community soon after the time of the imposition of the anti-dumping measures on the PRC. Though concerned by the investigation, this customer did not cooperate. The general pattern and developments of Kenso Corporation's exports did not explain either their appearance on the Community market. Therefore, the change in the pattern of trade remained unexplained.

Taiwan

(33) Sinon Corporation produces glyphosate starting from the initial stage of producing glyphosate acid and also formulates purchased glyphosate acid which does not originate in the PRC, both operations being carried out in Taiwan. The investigation has shown that Sinon has exported to the Community its own produced product, with the exception of limited quantities of formulated glyphosate purchased from a Malaysian company and shipped directly from Malaysia to the Community. It was therefore considered that Sinon Corporation reasonably established that the imposition of the anti-dumping duty on glyphosate originating in the PRC did not drive the change in its pattern of trade.

Conclusion

(34) Given the above, it is considered that Crop Protection and Sinon Corporation have shown that there were reasonable grounds, other than the imposition of the anti-dumping duty on glyphosate originating in the PRC, for the change in their pattern of trade. Consequently, the investigation with regard to glyphosate produced by these two companies should be terminated.

(35) Kenso Corporation failed to submit evidence of sufficient due cause or economic justification for the change in its pattern of trade. An investigation was consequently carried out, in its respect, to assess the undermining of the remedial effects of the duty and the existence of dumping in relation to the normal values previously established.

(b) ***Non-cooperating companies***

(36) In the absence of cooperation, and given the coincidence in time with the imposition of the anti-dumping measures on the PRC, it has to be concluded that the change in the pattern of trade stemmed from the imposition of the anti-dumping duty rather than from any other sufficient due cause or economic justification within the meaning of the second sentence of Article 13(1) of the basic Regulation.

(37) This conclusion is reinforced by the following. Export statistics from the PRC show a substantial increase in exports to Taiwan or Malaysia between 1997 and the IP (see recital 29) for glyphosate not put up for retail sale (i.e. non formulated). The significant increase in imports to the Community from Malaysia or Taiwan was mainly registered on the non formulated glyphosate. Exports from the PRC to Taiwan were, in Taiwanese imports statistics, either (i) not registered (systematically for formulated glyphosate, the import of which into Taiwan from

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mainland China is, in any case, prohibited by Taiwanese customs law) or (ii) registered in much lower quantities for non formulated glyphosate.

(38) The Commission has also investigated whether the development, in Malaysia and Taiwan, of transformation operations of the glyphosate acid into another form (salt or formulated product) could justify the change in the pattern of trade. The added value of the operations is minor (around 5 % on the cost of manufacturing). Information on manufacturing and transport costs from cooperating companies in Malaysia (quantities from Taiwan are too low to draw conclusions) give no evidence that transforming the acid into salt locally rather than in the Community is cost saving. Even if formulating acid locally rather than in the Community can compensate for the increased shipping costs involved, this does not explain why exports to the Community surged immediately after the imposition of anti-dumping measures on the PRC.

(39) It was, therefore, concluded that no reasonable grounds, other than avoiding the existing anti-dumping duty on imports of glyphosate originating in the PRC, could be established for the change in the pattern of trade of the non-cooperating companies and that the investigation of the other criteria should be continued in their respect.

5. **Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like products**

(40) In view of the conclusions reached in recitals 31 to 39, the analysis of the undermining of the remedial effects of the duty in terms of quantities and prices has been limited to those economic operators for which the change in pattern of trade was found to have insufficient due cause or economic justification.

(41) Since the imposition of measures in the original investigation, a quantitative change in the pattern of Community imports occurred, which undermined the remedial effects of the measures in terms of the quantities imported into the Community. The imports of glyphosate from the PRC in the IP of the original investigation (1 397 tonnes) were exceeded by exports from Taiwan and Malaysia in the IP (representing 1 864 tonnes).

(42) With regard to prices, and regarding the cooperating Malaysian exporting producer Kenso Corporation, the investigation revealed that the export prices submitted by this company [1] are still below the non-depressed level of Community prices as established in the original investigation. In fact, they were even lower than the export prices established in the original investigation.

(43) Regarding non-cooperating companies from Malaysia and Taiwan, the investigation also revealed that the prices of these imports, on the basis of the responses provided by unrelated importers in the Community and representing a volume of around 50 % of the Chinese imports in the previous investigation, were also below the non-depressed level of Community prices as established in the original investigation and even lower than the export prices established in the original investigation.

(44) It is therefore concluded that the imports concerned undermined the remedial effects of the duty both in terms of quantities and prices.

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[1] The export prices were duly adjusted for import duty and post importation costs.

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6. **Evidence of dumping in relation to the normal values previously established for like or similar products**

(45) It has to be recalled that Article 13(1) of the basic Regulation requires evidence of dumping in relation to the normal values previously established for the like or similar products but does not require the establishment of a new dumping margin.

(46) The investigation into the absence of movement, or insufficient movement, in the resale prices or subsequent selling prices in the Community, concluded by Regulation (EC) No 1086/2000, re-examined the normal values of the original case (see recital 1). Consequently, the normal values used in the present investigation were those as re-examined, since these represent the normal values previously established for the like or similar products in accordance with Article 13(1) of the basic Regulation.

(a) ***Cooperating exporting producer***

(47) Given that the change in the pattern of trade of Crop Protection and Sinon Corporation was considered as having a due cause other than the imposition of the anti-dumping duty on the PRC, the evidence of dumping was investigated only in respect of the exports to the Community of Kenso Corporation.

(48) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation in respect of level of trade, transport, insurance, handling, loading and ancillary costs, credit and commissions.

(49) In the original investigation, normal value was established for the two forms of glyphosate produced and sold in the selected analogue country (Brazil), i.e. glyphosate acid and formulated glyphosate. Since exports by Kenso Corporation of another form was negligible in the IP and Article 13(1) of the basic Regulation does not require the establishment of a new dumping margin, no normal value was established for this type. In accordance with Article 2(11) and (12) of the basic Regulation, the weighted average normal value of each form of glyphosate exported to the Community was compared to the weighted average export price of the corresponding form. The difference, expressed as a percentage of the cif import price at the Community frontier duty unpaid, showed a significant level of dumping.

(b) ***Non-cooperating companies***

(50) The export prices were established on the basis of the total export value and volume reported by Eurostat at TARIC level, from which the quantities and values exported by the cooperating exporting producers were deducted for their respective countries.

(51) The weighted average price of exports registered under the TARIC code 3808 30 27*10 (herbicides, glyphosate) was compared to the normal value for formulated glyphosate. The other forms of glyphosate are registered under the TARIC code 2931 00 95*80 (organo-inorganic compounds, glyphosate). To ensure a proper comparison which was unaffected by the product mix of the exports registered under this TARIC code, the weighted average export price was compared to both the normal value for glyphosate acid and to the lower normal value for formulated glyphosate. In both cases, substantial levels of dumping were established.

(52) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability. These adjustments were made in accordance with Article

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2(10) of the basic Regulation in respect of transport, insurance, handling, loading and ancillary costs, credit and commissions.

(53) In accordance with Article 2(11) and (12) of the basic Regulation, the comparison of weighted average normal values and weighted average export prices expressed as a percentage of the cif import price at the Community frontier duty unpaid, showed a significant level of dumping.

C. **REQUESTS FOR EXEMPTION FROM REGISTRATION OR EXTENSION OF THE DUTY**

(54) The Commission received requests for exemption from the registration or measures from four unrelated importers and two cooperating exporting producers, Crop Protection and Sinon Corporation. Given that the alleged circumvention was taking place outside the Community, exemption of imports from registration or measures was dependent on the findings in respect of the exporters. No decision could therefore be taken by the Commission purely on the basis of the exemption requests presented by individual importers. Importers will, however, benefit from exemption from registration or measures to the extent that their imports are from exporters which have been granted such an exemption.

(55) By Regulation (EC) No 2593/2001 ([1]), the Commission amended the initiating Regulation in order to cease registration of imports of glyphosate produced by those companies in the countries concerned found not to be circumventing the anti-dumping duties, namely Crop Protection and Sinon Corporation.

(56) In accordance with the above findings that these companies were found not to have circumvented the anti-dumping measures in force, these companies should also be exempted from the extension of the measures envisaged.

D. **MEASURES**

(57) In view of the above finding of circumvention within the meaning of the second sentence of Article 13(1) of the basic Regulation and in accordance with the first sentence of Article 13(1) of the basic Regulation, the existing anti-dumping measures on glyphosate originating in the PRC should be extended to the same product consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not. Exception should be made for glyphosate consigned from Malaysia and produced by Crop Protection and for glyphosate consigned from Taiwan and produced by Sinon Corporation.

(58) In accordance with Article 14(5) of the basic Regulation, which provides that measures may be applied against registered imports from the date of registration, the anti-dumping duty should be collected on imports of glyphosate consigned from Malaysia or Taiwan which entered the Community under registration imposed by the initiating Regulation, except on imports of glyphosate consigned from Malaysia and produced by Crop Protection and of glyphosate consigned from Taiwan and produced by Sinon Corporation.

(59) The exemption from this extension which is granted to Crop Protection and Sinon Corporation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during that investigation with respect to these companies. The non-extension is thus exclusively applicable to imports of products consigned from Malaysia and produced by Crop Protection, and to those consigned from Taiwan and produced by Sinon Corporation. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including enti-

([1]) OJ L 345, 29.12.2001, p. 29.

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ties related to those specifically mentioned, cannot benefit from the exception and should be subject to the duty rate imposed by the definitive Regulation.

(60) Any claim requesting the application of this exception would have to be addressed to the Commission forthwith, with all relevant information, in particular any modification in the company's activities linked to production and export sales.

(61) Taiwanese or Malaysian exporters requesting an exemption pursuant to Article 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted, and the Commission would normally also carry out an on-spot verification visit.

(62) Where exemption is considered appropriate, the Commission would, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from the exception.

E. **PROCEDURE**

(63) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to propose the extension of the definitive anti-dumping duty in force and were given the opportunity to comment. No comments which were of a nature to change the above conclusions were received,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EC) No 368/98 on imports of glyphosate falling within CN codes ex 2931 00 95 ►C1 (Taric code 2931 00 95*82) ◄ and ex 3808 30 27 (TARIC code 3808 30 27*19) originating in the People's Republic of China as amended by Regulation (EC) No 1086/2000, is hereby extended to imports of glyphosate consigned from Malaysia (whether declared as originating in Malaysia or not) (TARIC codes 2931 00 95*81 and 3808 30 27*11) with the exception of those produced by Crop Protection (M) Sdn. Bhd., Lot 746, Jalan Haji Sirat 4 $^{1}/_{2}$ Miles, off Jalan Kapar, 42100 Klang, Selangor Darul Ehsan, Malaysia (TARIC additional code A309).

2. The definitive anti-dumping duty imposed by Regulation (EC) No 368/98 on imports of glyphosate falling within CN codes ex 2931 00 95 ►C1 (Taric code 2931 00 95*82) ◄ and ex 3808 30 27 (TARIC code 3808 30 27*19) originating in the People's Republic of China as amended by Regulation (EC) No 1086/2000, is hereby extended to imports of glyphosate consigned from Taiwan (whether declared as originating in Taiwan or not) (TARIC codes 2931 00 95*81 and 3808 30 27*11), with the exception of those produced by Sinon Corporation, No. 23, Sec. 1, Mei Chuan W. Rd, Taichung, Taiwan (TARIC additional code A310).

3. The duty extended by paragraph 1 and 2 shall be collected on imports registered in accordance with Article 2 of Regulation (EC) No 909/2001 and Article 13(3) and Article 14(5) of Regulation (EC) No 384/96.

4. The provisions in force concerning customs duties shall apply.

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the Community and must be signed by a person authorised to represent the applicant. The request must be sent to the following address:

Commission of the European Communities

▼B

Directorate-General for Trade
Unit C-3
B-1049 Brussels
Fax (32-2) 295 65 05.

2. The Commission, after consulting the Advisory Committee, shall authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping duty imposed by Regulation (EC) No 368/98 from the duty extended by Article 1.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EC) No 909/2001.

Article 4

This Regulation shall enter into force on the day following that of 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.