

## I

*(Acts whose publication is obligatory)***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**

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<sup>(1)</sup> (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<sup>(2)</sup>, 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<sup>(3)</sup> 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<sup>(4)</sup> 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<sup>(5)</sup>, 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.

(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*<sup>(6)</sup>.

**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.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>(2)</sup> OJ L 47, 18.2.1998, p. 1.

<sup>(3)</sup> OJ L 124, 25.5.2000, p. 1.

<sup>(4)</sup> OJ L 30, 31.1.2002, p. 1.

<sup>(5)</sup> OJ C 120, 23.5.2002, p. 3.

<sup>(6)</sup> OJ C 36, 15.2.2003, p. 18.

- (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 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.
- (14) Moreover, it was established that the government of the PRC had entrusted the China Chamber of Commerce Metals, Minerals & Chemicals Importers and Exporters (CCCME) 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 CCCME 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<sup>(1)</sup> 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-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.

<sup>(1)</sup> Salt of glyphosate acid and Isopropylamine.

- (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 the normal value. Even though no substantiated proposals for an analogue country other than Brazil were made, the Commission inquired from Taiwanese and Malaysian known producers of the product concerned about their willingness to provide the necessary information. However, these producers in Taiwan and Malaysia submitted that both of these markets were strongly influenced by low-priced imports of glyphosate originating in the PRC and that the prices in these countries were not representative. One producer in Taiwan considered that other countries, such as Brazil, were more suitable for this purpose. As a result no further cooperation of these producers was achieved.
- (27) The Chinese exporting producer in the PRC submitted also that information concerning Brazil would be provided by an affiliated related company of a member of the applicant and that the Commission should rather use independent and properly verifiable information for the purpose of establishing normal value. However, it was considered that the fact that one company in the proposed analogue country is a related company of a member of the applicant did not preclude that the information obtained could be reliable and verifiable. Special attention was paid to the necessity to eliminate any possible effects of the relationship in determining the normal value.
- (28) Since Brazil was considered a reasonable choice, with producers willing to cooperate and using a comparable production process, and particularly taking into account that Brazil was the analogue country used in the investigation leading to the imposition of the measures, Brazil was chosen as the analogue country. The Commission sought to obtain the necessary information from the two known producers in the country, i.e. Monsanto do Brasil (Mobras) and Nortox. The Commission was ultimately able to obtain information only from Mobras, which is a company related to a member of the applicant. It was determined that the domestic sales of this company were representative in relation to the volume of the product concerned sold by the Chinese exporting producer to the Community.

## 2. Normal value

- (29) Normal value was calculated for all forms of glyphosate produced and sold in Brazil, i.e. glyphosate acid and different formulations based on their concentration.

- (30) It was established that the product types sold on the domestic market of Brazil were not comparable to the product types sold by the said exporting producer to the Community. 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 (SG&A) and for profit. The SG&A costs and profit were determined on the basis of Mobras' domestic sales of the like product. In this regard it is noted that Mobras sourced the major part of its raw materials for glyphosate production from a related company in Brazil. The profit level of the related company was adjusted to a lower level, when determining the cost of acquisition of raw material used in the calculation of the manufacturing costs.
- (31) The amounts for SG&A and for profits were based on actual data pertaining to sales, in the ordinary course of trade, of glyphosate, by Mobras.

## 3. Export price

- (32) All export sales of the Chinese exporting producer to the Community were made directly to independent customers in the Community and the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices paid or payable.
- (33) The comparison of the data concerning exports to the Community provided by the Chinese exporting producer and the total volume of imports originating in the PRC as determined in recital 58 below, indicated that the level of cooperation was low, since these exports represented less than 26 % of total Community imports from the PRC during the IP.

## 4. Comparison

- (34) For the purposes of a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments were made where appropriate with regard to indirect taxes, discounts, transport, insurance, handling, loading and ancillary costs, packing, credit and commissions. The adjustments in the export price in respect of inland freight in the exporting country, packing costs and credit costs were made based on the costs established in the analogue country.

- (35) The comparison between normal value and export price was made on an ex-works basis.

#### 5. Dumping margins

- (36) A comparison of the normal value and the export price of the Chinese exporting producer showed a dumping margin of 28,7 % during the IP.

- (37) In the absence of individual treatment being granted to this exporting producer, an overall dumping margin was calculated for the whole of the PRC.

- (38) Since, as described in recital 33, the level of cooperation was low, for the export volumes of non-cooperating Chinese exporting producers, the level of dumping was determined on the basis of the highest margin established for a representative type of the product concerned, of the cooperating exporting producer. This approach was deemed appropriate since no indication was found that any of the non-cooperating producers dumped the product at a lower level than that of the cooperating exporter. Therefore, a dumping margin of 30,2 % was attributed to all non-cooperating exporting producers and the cooperating exporting producer which had no exports to the Community during the IP.

- (39) Finally, a country-wide average dumping margin was calculated using as a weighing factor, the cif value of each group of exporters, i.e. cooperators and non-cooperators. The established country-wide dumping margin was 29,9 %.

- (40) The country wide dumping margin established in the interim review investigation was lower than the dumping margin established in the original investigation and, furthermore, it was lower than the dumping margin established in the anti-absorption investigation pursuant to Article 12 of the basic Regulation. It is to be recalled that there has been a considerable reduction in the normal value of the product concerned since the IP of the original investigation. Therefore, it is reasonable to conclude that it is not likely that a higher dumping margin would recur if the measures were amended to reflect the dumping margin established in the interim review investigation.

#### 6. Development of imports should measures be repealed

##### (a) PRC export sales to other countries (volume and prices)

- (41) It was found that glyphosate was sold to third countries at prices even lower than the dumped prices of the sales to the Community market as derived from the questionnaire responses and from Eurostat statistics. Moreover, as derived from the questionnaire responses the volumes of exports to third countries increased by

more than 100 % since the imposition of the definitive measures. Therefore, if the measures were lifted, the exporting producers in the PRC could also divert their existing exports to other markets to the Community market in significant quantities at dumped prices.

- (42) Information provided by the applicant showed that more than 80 % of all glyphosate production in the PRC is exported. In respect of the two cooperating exporting producers, exports accounted for a major proportion of their total production of glyphosate. Therefore, it was established that most of the glyphosate production in the PRC was directed to export markets.

##### (b) Unused production capacities in the PRC

- (43) The two cooperating companies declared that their production capacity during the IP was around 34 000 tonnes of glyphosate expressed in 95 % acid equivalents. Since 1999 these two companies have increased their production capacity by more than 92 % according to their questionnaire responses. Information provided by the applicant estimated that the total glyphosate production capacity in the PRC amounted to 79 500 tonnes. Both cooperating companies were operating close to full capacity levels. However, the information provided by the applicant showed that the average capacity utilisation rate of all producers in the PRC was around 83 % in 2001 i.e. leaving a spare capacity of about 13 500 tonnes.

- (44) Based on the above, it was concluded that the exporting producers in the PRC have available capacity to increase their exports to the Community market should the measures be repealed.

##### (c) Circumvention/absorption practices in the past

- (45) As indicated in recital 1, following the imposition of definitive duties in February 1998, two other investigations were conducted pursuant to Article 12 and Article 13 of the basic Regulation. The findings of these investigations demonstrated the inability of the PRC exporters to compete on the Community market at non-dumped levels, because in order to be present on the Community market they had to resort to circumvention practices by transshipping the product concerned to the Community via other countries at significantly dumped prices (anti-circumvention investigation pursuant to Article 13) and to absorption practices.

*(d) Imports under inward processing*

- (46) More than 90 % of recent imports originating in the PRC have been made under inward processing arrangements. During the analysis period, imports originating in the PRC made under inward processing regimes have steadily increased, at the expense of duty paid imports, from around 60 % of the total in 1999 to more than 90 % in the IP. PRC exports have clearly shifted to the inward processing regime in recent years.

*(e) Conclusion on the likelihood of a continuation of dumping*

- (47) Since the PRC has unused production capacity and average export prices to non-EC countries were, during the investigation period, substantially lower than those prevailing on the Community market, it could be expected that, should the measures be repealed, additional production, or sales currently exported to non-EC countries, would be redirected towards the Community market in significant quantities.
- (48) The investigation showed that exports originating in the PRC are still made at dumped prices. Therefore, it is reasonable, in the absence of any indication to the contrary, that dumping would likely continue in the future. Moreover, the volume of dumped imports, which is currently at low levels, was found likely to increase significantly should measures expire.

**7. Undertaking**

- (49) The cooperating exporting producer in the PRC, Xinanchem, expressed its interest in offering an undertaking. However, it is recalled that Xinanchem did not meet the requirements to be granted individual treatment because there was a price-control system in place which was entrusted to the CCCMC by the State. Moreover, due to the low level of cooperation obtained from exporting producers in the PRC, the Commission was not in a position to consider further an undertaking proposed by Xinanchem because of the high inherent risk of circumvention of such an undertaking. The cooperating exporting producer was informed accordingly. Further to that the Commission received no actual offer for an undertaking from Xinanchem.

**D. SITUATION ON THE COMMUNITY MARKET****1. General**

- (50) The four Community producers that co-operated in the investigation represented 100 % of Community production of glyphosate during the IP. Therefore, they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

- (51) For the purposes of this review, and as in the original investigation, the Community industry is considered as comprising only actual producers of glyphosate, i.e. those that manufacture glyphosate from the necessary raw materials as distinct from formulators that only transform one form of glyphosate into another. One Chinese exporting producer claimed that formulators, i.e. companies that buy glyphosate acid or salt and process it into formulated glyphosate, should also be considered as Community producers. However, the product concerned by this review is glyphosate in its various forms and it is clear that a formulator — by definition — only processes an existing form of glyphosate into another form. It is therefore not accepted that a formulator is actually a producer of glyphosate. Furthermore, this distinction between producers and importers/formulators is consistent with the approach adopted in the original investigation.

- (52) Concerning one producer, it was necessary to consider whether it could be defined as a Community producer due to the corporate structure of the group of which it formed part. It was found that this producer is fully integrated in a single economic entity, which consists of a large number of companies and operates as follows: The group headquarters, located outside the Community, purchases the raw materials. A subsidiary in the Community (the producer in question) manufactures glyphosate acid under a toll arrangement with the group headquarters, which still retains ownership of the glyphosate. Subsequently, the glyphosate acid is sold by the group headquarters to a second subsidiary in the Community, where it is processed into salt and formulated product. The formulated product is then sold on to a network of related distributors in the Community within the group which finally sell it to independent customers. The investigation has shown that the glyphosate produced by this company is of Community origin and that the manufacturing operations, the technological and capital investment for the manufacturing operations and the sales operations take place in the Community. Based on the above, this producer is a Community producer within the meaning of Articles 5(4) and 4(1) of the basic Regulation.

- (53) A Community producer and an association representing distributors and users claimed that one company that was considered a Community producer was not, in fact, producing glyphosate acid within the Community but merely importing acid or salt from a third country and formulating it in the Community. The investigation has shown that, while the company does import certain quantities of formulated glyphosate from third countries, nevertheless, the majority of the products it sells in the Community are made from glyphosate acid produced by the company itself in the Community. The company was therefore considered as a Community producer, and the claim had to be rejected.

(54) The examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 1999 to the IP.

(55) In general, figures concerning volumes of glyphosate are inclusive of all forms of glyphosate, unless it is stated otherwise. For comparison purposes, volumes have been restated on the basis of a 95 % glyphosate acid content. The figures for sales by the Community industry only include sales of glyphosate produced in the Community, and exclude any sales of glyphosate imported and subsequently resold by certain Community producers.

## 2. Community consumption

(56) The market for glyphosate within the Community, into which the Community industry sells, covers both the demand for formulated product which is ready to be used as a herbicide, plus the demand by importers/formulators for glyphosate in either salt or acid form for further processing into formulated product and which may subsequently be sold either in the Community or exported. Both of these demands can be supplied either by the Community industry itself or by imports from third countries. The Community consumption has therefore been assessed at the level of sales to distributors/users and importers/formulators. This has been calculated on the basis of the total volume of production by the Community industry, adjusted in respect of changes in stock levels, plus the total imports as reported by Eurostat and supplemented by information provided by the Community industry concerning certain volumes which received specific customs treatment, less the exported volumes reported by the Community industry.

(57) On this basis, Community consumption was found to have increased steadily and by 41 % between 1999 and 2002. This reflects the increasing acceptance and use of glyphosate as a non-selective herbicide. Detailed data, expressed in tonnes, is as follows.

Table 1

### Consumption

Consumption	1999	2000	2001	2002 (IP)
Tonnes (95 % acid equivalent)	24 782	29 280	31 562	35 021
Index	100	118	127	141

## 3. Volume of the imports originating in the PRC and market share

(58) The volume of imports of the product concerned was established on the basis of statistical information provided by Eurostat and supplemented by information provided by the Community industry concerning certain volumes which received specific customs treatment. In order to protect the confidentiality of this information, figures are expressed in indexed form. 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 %. As explained in recital 46, more than 90 % of recent imports originating in the PRC have been made under inward processing arrangements, demonstrating that the majority of PRC glyphosate imported is actually re-exported, reflecting the fact that the measures make it difficult to sell in the Community. During the analysis period, imports originating in the PRC made under inward processing regimes have steadily increased, at the expense of duty paid imports, from around 60 % of the total in 1999 to more than 90 % in the IP. The market share of PRC exporters has clearly diminished as a result of the measures in force, but they nevertheless continue to maintain a clear presence on the Community market. The development of imports originating in the PRC and the market share of the PRC during the analysis period is shown in the following table in indexed form, taking 1999 as the basis.

Table 2

### Imports originating in the PRC

Imports originating in the PRC	1999	2000	2001	2002 (IP)
Volumes (indexed)	100	95	76	100
Market share (indexed)	100	81	62	73

## 4. Prices of the imports concerned

### (a) Evolution of prices

(59) As imports of formulated glyphosate originating in the PRC into the Community have been negligible and there have been no imports of glyphosate salt during the IP, the development of prices was established by using prices for glyphosate acid only. This

information is based on Eurostat figures. The prices of imports of glyphosate acid 95 % originating in the PRC, expressed in EUR/kg before the application of the anti-dumping duty, decreased steadily from EUR 3,50 in 1999 to EUR 2,80 in the IP, a drop of 20 % overall. Detailed data is as follows:

Table 3

**PRC prices**

PRC prices	1999	2000	2001	2002 (IP)
EUR per kg before anti-dumping duty (at 95 % acid equivalent)	3,50	3,31	3,04	2,80
Index	100	94	87	80

(b) *Price undercutting*

- (60) For the reason explained in recital 59, the assessment of price undercutting was also made by using prices for glyphosate acid only. As acid imported originating in the PRC is in 95 % acid form and that sold by the Community producers on the Community market is in wet cake 84 % form, in order to enable a correct comparison, prices of wet cake glyphosate were converted to a 95 % acid content basis, which is possible since essentially the only difference between the two products is the greater water content of the wet cake. Additionally, the price of Chinese glyphosate

was based on the information submitted in the course of the investigation by the cooperating exporting producer. On the basis of Community frontier prices, inclusive of customs duties but before anti-dumping duties, during the IP, there was an undercutting margin of 20 to 30 % indicating that without the measures, the prices on the Community market would be exposed to downward pressure by the lower prices of the PRC glyphosate. Given the level of the existing anti-dumping duties (48 %) the duty paid price of glyphosate originating in the PRC exceeded the sales price of the Community industry by 10 to 20 %. It should be noted, however, that an underselling margin in excess of 80 % was established in respect of sales during the IP of glyphosate of PRC origin on a duty unpaid basis, as explained in recitals 119 and 120.

(c) *Imports originating in other third countries*

- (61) As mentioned in recital 71 below, one Community producer imported significant quantities of formulated glyphosate from related companies in third countries. These imports relate to a high-value non-standard formulated product. Both the import and resale prices for this product are significantly higher than prices of the main formulated products produced and sold by the Community industry in the Community. Therefore, these imports did not contribute to price depression on the Community market.
- (62) The import figures given below include also glyphosate imported under inward processing but exclude glyphosate imports by a Community producer from related companies in third countries.

Table 4

**Import volume from other third countries and market shares**

95 % acid equivalent	1999			2000			2001			2002(IP)		
	Tonnes	Market share	Price EUR/kg	Tonnes	Market share	Price EUR/kg	Tonnes	Market share	Price EUR/kg	Tonnes	Market share	Price EUR/kg
Malaysia	1 884	7,6 %	2,85	1 622	5,5 %	2,84	1 239	3,9 %	2,57	78	0,2 %	2,83
<i>Indexed</i>	100		100	86		100	66		90	4		99
Taiwan	736	3,0 %	3,87	1 253	4,3 %	3,87	469	1,5 %	3,46	1 354	3,9 %	3,24
<i>Indexed</i>	100		100	170		100	64		90	184		84
Others	1 292	5,2 %	3,94	2 141	7,3 %	3,82	2 212	7,0 %	3,40	1 695	4,8 %	3,19
<i>Indexed</i>	100		100	255		100	174		89	90		84
TOTAL	3 912	15,8 %	3,38	5 016	17,1 %	3,44	3 920	12,4 %	3,13	3 127	8,9 %	3,20
<i>Indexed</i>	100		100	128		102	100		93	80		95

- (63) To give a meaningful price comparison for glyphosate imports from third countries, this comparison has been made on the basis of glyphosate acid, which accounted for more than 90 % of glyphosate imports during the IP.
- (64) Imports of glyphosate by companies not related to the Community producers have decreased slightly from 3 912 tonnes in 1999 to 3 127 in the IP. The only significant imports during the IP from countries other than the PRC, apart from those imports by the Community producers from related companies outside the Community, come from Taiwan (see the table above). Following an anti-circumvention investigation, Council Regulation (EC) No 163/2002 extended the duty to imports of the product concerned consigned from Malaysia or Taiwan (whether declared as originating in Malaysia or Taiwan or not), with the exception of those produced by one named company in each of those countries. Imports from Malaysia have decreased substantially following the extension of measures and during the IP they were not significant.
- (65) In the case of Taiwan, imports decreased during 2001 when the anti-circumvention investigation was under way but increased again during the IP to a level representing approximately 4 % of Community consumption. While the level of imports from Taiwan continues to be relatively high, it must be borne in mind that not all exports from Taiwan are subject to the extended duties resulting from the anti-circumvention review. It is also to be noted that during the analysis period the prices of imports from Taiwan, were 10 to 20 % higher than imports originating in the PRC, not taking into account the anti-dumping duties applicable to imports originating in the PRC, and that Taiwanese prices did not undercut the Community industry prices during the IP. Imports from all other countries are made at prices very close to those of the Community industry.

## 5. Situation of the Community industry

### (a) General

- (66) In order to make a meaningful assessment of certain injury indicators, it was necessary to exclude data in respect of the producer referred to in recital 52 in those cases where this data may have been influenced by companies within the group structure but located outside the Community. Since the profitability of the European operations of this company are affected by the results achieved by its whole supply chain, including its headquarters located outside the Community, it was deemed appropriate to exclude the data from this company from the analysis of indicators in sections (f) profitability and (h) cash flow and ability to raise capital, as well as from the analysis of 'return on investment' in section (g) Investments and return on investments. Furthermore, as this company resulted from the merger of two previously independent entities, it was not in a position to provide information for the whole of the analysis period in relation to sales prices and employment. For that reason, it was also necessary to exclude the available information from the analysis of the trends in sections (e) Sales prices and costs and (i) Employment, productivity and wages. As this company only accounted for in the range of 15 % to 25 % of Community production of the product concerned, the findings set out below are considered to be representative.
- (b) *Production, production capacity and capacity utilisation*
- (67) Production of glyphosate by the Community industry increased from 48 334 tonnes in 1999 to a peak of 54 575 tonnes in 2000 and then decreased to a quantity of 50 448 tonnes in the IP. This represents an overall increase of 4 % over the analysis period.
- (68) Production capacity increased from around 63 000 tonnes in 1999 to almost 70 000 tonnes in the IP, an increase of 11 %. The increase during 2000 and 2001 is due to additional production facilities becoming operational combined with continued refinements in the production process.
- (69) Capacity utilisation initially increased from 77 % to 83 % in 2000, but then decreased through 2001 to a level of 72 % during the IP, an overall decrease of five percentage points compared with 1999. The economic effect of the existence of decreased capacity utilisation was examined and it was found that its impact on profitability was not significant.
- (70) The decreasing capacity utilisation, in the light of increasing sales of the product concerned in the Community, is negatively affected by the development of export sales of the Community industry to third countries. During the analysis period, export sales of the Community industry steadily decreased from 58 % of its world-wide sales in 1999 to 38 % of its world-wide sales in the IP.
- (71) Both the production and capacity utilisation figures for 2001 and 2002 were affected by a decrease in production by one Community producer due to its decision to import certain glyphosate products from related companies in third countries rather than producing them in the Community. The products in question are newly developed forms which require additional production equipment, currently unavailable in the Community. The deterioration in these injury indicators in 2001 and 2002 should be considered in the light of this development which has been mentioned in recital 61. The detailed data is as follows:

Table 5

**Production**

Production	1999	2000	2001	2002 (IP)
Production (tonnes at 95 % acid equivalent)	48 337	54 575	52 406	50 448
Index	100	113	108	104
Production capacity (tonnes at 95 % acid equivalent)	63 029	65 720	70 028	69 930
Index	100	104	111	111
Capacity utilisation	77 %	83 %	75 %	72 %

(c) *Stocks*

- (72) Stocks of glyphosate increased over the analysis period from 9 149 tonnes in 1999 to 14 554 tonnes in the IP, an increase of 59 %. The main build up occurred in 2001 and 2002. This reflects the efforts of the Community producers to maintain high capacity utilisation in order to cover the fixed costs of their plants, while at the same time the market was not able to absorb those quantities. Detailed data is shown below:

Table 6

**Stocks**

Stocks	1999	2000	2001	2002 (IP)
Tonnes	9 149	9 902	13 049	14 554
Index	100	108	143	159

- (73) A party in the PRC argued that the build up of stocks by the Community industry could not be attributed to the effect of imports from the PRC but that it just related to decreased sales by the Community industry on export markets. In this regard, it should be noted that competition from PRC glyphosate, which was imported under inward processing and subsequently exported, also contributed to the decreased sales by the Community industry on the export market.

(d) *Sales volume, market share and growth*

- (74) The sales on the Community market of glyphosate produced by the Community industry increased steadily during the analysis period from 19 945 tonnes in 1999

to 29 607 tonnes in the IP, an overall increase of 48 %. Similarly, the Community industry increased its market share from 80 % in 1999 to 85 % in the IP, having reached a level of 89 % during 2001. The decrease in market share from 2001 to 2002 was affected by imports of glyphosate from third countries by a Community producer, as mentioned in recital 71.

Table 7

**Sales**

Sales	1999	2000	2001	2002 (IP)
Community industry sales (tonnes)	19 945	24 323	28 229	29 607
Index	100	122	142	148
Community industry market share	80 %	83 %	89 %	85 %

(e) *Sales prices and costs*

- (75) Prices were compared at the formulated stage, as this is the form of glyphosate that is used by the final consumer as a herbicide. Additionally, formulated glyphosate accounts for the vast majority of glyphosate sales both in terms of value and of volume. In order to ensure a fair comparison of prices, and given the existence of a variety of types of formulated glyphosate on the market, the prices of which can vary considerably both according to the concentration of the product and the type of surfactant used, the Commission services selected the most common formulation, a standard formulation which has 360g of glyphosate content per litre. This so-called 'standard 360 formulation' accounted for around 40 % by volume of glyphosate sales in the Community by the Community industry during the analysis period and, because it is now outside of patent, is the typical formulation that is either imported from the PRC or made from imported acid or salt originating in the PRC.

- (76) Additionally, for this comparison, formulated glyphosate produced by the Community industry containing special surfactants designed to make the product less hazardous, were considered separately. Sales of this non-hazardous formulation containing also 360g of glyphosate per litre accounted for around 20 % by volume of glyphosate sales in the Community by the Community industry during the analysis period. Glyphosate acid normally accounted for around 18 % by volume of the total glyphosate sales in the Community by the Community industry during the analysis period, the remainder consisting of glyphosate salt and other non-standard formulations containing a different glyphosate content per litre and/or special surfactants to improve the effectiveness or hazard classification.

(77) Glyphosate acid is the main element in the cost of production for glyphosate formulation. For standard 360 formulation it accounts for around 55 % of the total cost of production and for around 45 % in the case of non-hazardous 360 formulation.

(78) The sales prices of standard 360 formulated glyphosate, expressed per kilogram at 95 % acid equivalent (the equivalent of 2,64 litres of formulated product), fell steadily from EUR 9,23 in 1999 to EUR 7,28 in 2002, an overall decrease of 21 %. Cost of production also fell steadily from EUR 10,37 in 1999 to EUR 8,14 in the IP, a total decrease of 21 %. This product was unprofitable throughout the analysis period, although the gap between cost of production and sales price remained relatively stable over the period.

Table 8

**Standard 360 formulation**

Standard 360 formulation	1999	2000	2001	2002 (IP)
Quantity sold (tonnes at 95 % acid equivalent)	7 632	9 102	10 015	10 322
% of EU sales	43 %	41 %	39 %	38 %
Sales price (EUR per kg at 95 % acid equivalent)	9,23	8,65	7,55	7,28
Index	100	94	82	79
Cost of production (EUR per kg at 95 % acid equivalent)	10,37	9,31	8,88	8,14
Index	100	90	86	79

(79) For non-hazardous formulated glyphosate containing 360 g of glyphosate per litre, the sales price, expressed per kilogram at 95 % acid equivalent (the equivalent of 2,64 litres of formulated product), fell steadily from 1999 to 2002 for an overall decrease of 12 %. Cost of production also fell from 1999 to 2001, but increased again in the IP for an overall decrease of 22 %. The increase in cost of production in the IP is due to reduced capacity utilisation. The profitability of this product increased in the course of the analysis period.

Table 9

**Non-hazardous 360 formulation**

Non-hazardous 360 formulation	1999	2000	2001	2002 (IP)
Quantity sold (Index)	100	123	125	106
% of EU sales (Index)	100	100	88	69
Sales price (Index)	100	100	90	88
Cost of production (Index)	100	79	73	78

(80) The table below shows the combined weighted average sales price and cost of production for all forms of glyphosate, i.e. salt, acid and all types of formulated products. Sales prices and cost of production seemingly increased in 2001. The reason for this is a change in the product mix sold on the Community market, i.e. the Community industry sold less of the lower-value acid and salt products on the Community market.

Table 10

**All products**

All products	1999	2000	2001	2002 (IP)
Sales price (EUR per kg at 95 % acid equivalent)	8,92	7,94	8,16	7,61
Index	100	89	91	85
Cost of production (EUR per kg at 95 % acid equivalent)	8,55	7,58	8,01	7,84
Index	100	88	94	92

(f) Profitability

(81) The overall profitability of the Community Industry in respect of glyphosate activities deteriorated from 4,2 % in 1999 to -2,6 % in the IP. This profitability relates to all forms of glyphosate produced and sold by the Community industry in the Community. Glyphosate imported and resold, as mentioned at recital 71, has not been included in this calculation.

(82) A party in the PRC argued that the product which was imported and resold should have been included in the assessment of overall profitability. In this regard, these products have been correctly excluded since they do not contribute to the profitability of the Community industry relating to production and sales in the Community. The argument is therefore rejected.

(83) Overall profitability was also negatively affected by the mix of products sold by the Community industry on the Community market. The Community industry planned to move away from the 'standard' glyphosate formulation, which has been selling at a loss under pressure from low priced imports, mainly from the PRC and Taiwan, towards more sophisticated, higher value products such as the non-hazardous formulations. However, during the IP, sales of these higher value products produced within the Community decreased due to a weaker demand for these products, having a negative effect on overall profitability. The profitability figures are given in table 11.

(84) Glyphosate is also sold by importers/formulators on the Community market. These sales, almost exclusively of standard 360 formulation glyphosate, which is the biggest selling product of the Community industry, compete directly with the sales by the Community industry of the same formulation. The glyphosate in question is sourced either as acid or salt primarily from Community producers, but is also imported from third countries. While sales by the Community industry to supply the demand of this standard formulation have not been profitable, nevertheless, the Community industry needs to continue to supply them as these sales provide a contribution to cover their fixed costs through the maintenance of capacity utilisation.

Table 11

**Profitability**

Profitability	1999	2000	2001	2002 (IP)
Profitability (Community sales)	4,2 %	4,3 %	0,6 %	-2,6 %

(g) *Investments and return on investments*

(85) Investment in the glyphosate business decreased sharply after 1999 to between 15 % and 18 % of the 1999 figures. It has to be noted that the bulk of the investments relating to the capacity increases in 2001 were made in the years up to 1999. No significant investment was planned or made for the remainder of the analysis period. Detailed data is shown below:

Table 12

**Investments**

Investments	1999	2000	2001	2002 (IP)
Investments (EUR '000)	50 940	7 409	9 035	7 883
Index	100	15	18	15
Return on investment	22 %	157 %	17 %	negative

(h) *Cash flow and ability to raise capital*

(86) Cash flow of the Community industry deteriorated between 1999 and the IP, both in absolute values as well as expressed as a percentage of turnover. This decrease is in line with the deterioration of the overall profitability during the analysis period.

Table 13

**Cash flow**

Cash flow	1999	2000	2001	2002 (IP)
Cash flow (EUR '000)	13 217	11 769	4 975	-562
Index	100	89	38	negative
Cash flow expressed as percentage of turnover	5,0 %	4,4 %	2,1 %	-0,3 %

(87) Capital is either raised on the stock exchange or alternatively funded internally within the company. Investments and, in some cases, spending for R&D have been limited in recent years reflecting the decreasing profitability of glyphosate sales. The absence of significant investments since 2000 is confirmed by the figures given in recital 85.

(i) *Employment, productivity and wages*

(88) The Community producer referred to in recital 52 above was not in a position to present comparable figures for the whole of the analysis period for the reason explained in recital 66, therefore making it necessary to exclude the available information for this company in order to examine the trend on a consistent basis.

(89) Employment decreased in the analysis period from 1 017 employees in 1999 to 808 employees in the IP, a decrease of 20 %. This reflects a decrease in production in 2001 and 2002, but also reflects the fact that, in general, productivity, as measured by output per worker, has increased. In 2002 productivity decreased, mainly due to a reduction in capacity utilisation as noted in recital 71. The increase in wage costs per worker is a result of collective bargaining at industry level.

(90) A party in the PRC argued that the reduction in employment resulted from increased efficiency rather than from injury. However, the reduction in employment is largely a consequence of reduced production by the Community industry, although it is recognised that increased efficiency has also had an effect, as has been noted at recital 89.

Table 14

**Employment**

Employment	1999	2000	2001	2002 (IP)
Number of employees	1 017	846	791	808
Index	100	83	78	80
Wage costs per employee (in EUR)	57 730	60 040	63 619	64 871
Index	100	104	110	112
Production per employee (tonnes/year)	44	56	58	49
Production per employee (indexed)	100	129	133	112

*(j) Magnitude of dumping and recovery from past dumping*

(91) As concerns the impact on the situation of the Community industry of the magnitude of the dumping margin found in the IP (29,9%), it should be noted that, while the margin is less than that found in the original investigation (38,2%), it still remains at a high level. The situation of the Community industry initially improved to a certain extent after the imposition of the original measures, but it did not completely recover. It should be noted that dumping increased further to 62%, as established in the anti-absorption investigation mentioned in recital 1. This increased dumping and the subsequent

circumvention of the measures via Malaysia and Taiwan, as established in the anti-circumvention investigation mentioned in recital 1, certainly contributed to the price depression within the Community and on the declining profitability of the Community industry. Should imports from the PRC resume at higher levels, the impact on the Community industry of the dumping found in the current investigation would be significant.

(92) Two parties in the PRC argued that the measures were not effective and should be removed since, during the period for which they were in place, the economic situation of the Community industry did not recover significantly. In this regard, it must be noted that the effectiveness of the measures was reduced by continuing price pressure linked to decreasing prices of imports originating in the PRC. In addition, it should be recalled that absorption and circumvention practices occurred following the imposition of the measures, as mentioned in recitals 1 and 45, which also limited the effectiveness of the measures. In view of these factors, the argument that the measures should be removed is, therefore, not accepted.

**6. Conclusion on the situation of the Community industry**

(93) Following the imposition of the anti-dumping measures against imports originating in the PRC, the economic situation of the Community industry improved in terms of productivity, production, production capacity, sales and market share. This must be viewed, in addition to the existence of the measures, in the context of the increasing consumption of glyphosate within the Community. However, sales prices have steadily decreased resulting in a steady deterioration in profitability and culminating in losses in the IP. This has adversely affected cash flow, while stock levels have increased and employment has decreased. In addition, there has been no substantial new investment since 2000.

(94) A party in the PRC argued that the weak situation of the Community industry was due to its excess production capacity and reduced export sales. This argument is rejected in the light of the considerations mentioned in recitals 69 and 73. It is therefore considered that the economic situation of the Community industry continues to be weak.

#### E. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY

(95) Since the imposition of measures, the PRC has continued to sell glyphosate to the Community at dumped prices. While the quantity entering the Community market has decreased (*inter alia*, as a result of the measures), PRC exporters continue to maintain a clear presence on the market. Moreover, via their sales mostly under inward processing, they nevertheless continue to exert a certain pressure on prices within the Community. They currently have spare production capacity, amounting to approximately 40% of Community consumption, and, in addition, if measures were removed, they would be in a position to redirect existing exports away from lower priced markets in third countries, towards the Community market in significant quantities, as mentioned in recitals 41 and 47 above. This would enable them to supply increased quantities to the Community market at prices that would result in significant price undercutting and price depression in the Community if the measures in force would expire. Prices of imports of the product concerned from the PRC would also undercut the export prices of other third countries, e.g. in the case of Taiwan by somewhere between 10 to 20%.

(96) A party in the PRC argued that the low quantity of imports of glyphosate from the PRC should not affect prices on the Community market and that the decrease in Community prices was due to reductions in costs of production by the Community industry. This argument is rejected as it was found that glyphosate is a commodity product and therefore the presence of relatively small quantities of glyphosate on the Community market at low prices affects market prices. This is the case in particular for standard formulated product which accounts for around 40% of Community industry sales on that market and against which imports from the PRC compete directly. Despite the efforts of the Community industry to reduce its costs, its profitability in respect of the standard formulated product remained negative throughout the analysis period as a result of the decreasing prices.

(97) Another party in the PRC considered that imports under inward processing should not have been taken into account in assessing injury as these are not sold on the Community market. In this regard, it should be noted that imports of glyphosate salt and acid under inward processing compete directly with the same products from the Community industry for the demand by importers/formulators to supply their export markets. It is, therefore, correct to take the quantities of such imports into account in the assessment of injury. Moreover, although imports under inward processing are not themselves sold within the Community, the effect of the prices of these imports is felt in the market through the action

of importers/formulators who seek to obtain products to supply both Community and export demands at the most competitive prices available. Therefore, the prices of imports under inward processing contributed to the price pressure which led to the deterioration of the profitability of the Community industry on the Community market, and to its continued weak economic situation. The argument is, therefore, not accepted.

(98) As shown in recital 93, the Community industry is currently in a weak situation, in particular as regards its profitability which has continually declined, since the imposition of the measures under consideration, to a situation where the industry was making losses during the IP and is even experiencing a negative cash flow. On the basis of all this, it is therefore likely that if the Community industry was exposed to increased volumes of imports originating in the PRC at dumped prices, this would result in a deterioration of its already weakened financial situation and a loss in its market share. On this basis, it is concluded that, should the measures expire, this would lead to a continuation of injury to the Community industry.

#### F. COMMUNITY INTEREST

##### 1. General considerations

(99) The Commission examined whether the maintenance of the anti-dumping measures on glyphosate would be in the interest of the Community. It has been found that there is a likelihood of continuation of injurious dumping. The investigation also considered whether or not there are any overriding interests against maintaining the measures and also took account of the past effects of duties on all the various interests involved.

(100) It should be recalled that, in the original investigation, the adoption of measures was not considered to be against the interest of the Community. Since this is also an expiry review investigation, the impact of the existing measures, in particular on users, consumers and importers/formulators was also examined.

##### 2. Interest of the Community industry

(101) Glyphosate originating in the PRC is still offered at cif values below the current sales prices of the Community producers. Therefore, the expiry of measures would lead either to glyphosate originating in the PRC gaining market share on the Community market to the detriment of the Community producers, or alternatively the Community industry would have to lower their already declining sales prices even further in order to maintain market share and capacity utilisation. In both scenarios the Community industry would suffer losses due to an expiry of measures.

(102) The Community producers claimed that the measures had been either absorbed by the PRC or circumvented for most of the analysis period, thereby resulting in them having a limited remedial effect. The absorption and circumvention via Malaysia and Taiwan have been confirmed and addressed by the review investigations mentioned in recital 1.

(103) Several suppliers of raw materials and services came forward and stated that they expect a reduced Community production if measures were to expire, and therefore a reduced demand for their raw materials and services.

(104) In view of the above, it is considered that, in the absence of anti-dumping measures on imports of the product concerned from the PRC, the situation of the Community industry would worsen through increased imports at dumped prices from the PRC leading to increased financial losses. While imports from the PRC have dropped during the period analysed, it must be stressed that glyphosate can be considered as a commodity. In these circumstances, even a low level of imports at dumped prices can have a detrimental impact on the Community industry. The Community industry has increased production, sales volumes and market share over the period analysed but at the expense of profits. The essential viability of the industry would be threatened in the absence of measures to eliminate the injurious dumping.

### 3. Interest of unrelated importers/formulators

(105) Since the major part of glyphosate imports originating in the PRC into the Community is in the form of acid or salt and is resold in a formulated form, the formulating industry is therefore concerned by this proceeding. Certain of these importers indicated that, while currently only importing minimal quantities of glyphosate from the PRC, they would recommence imports from the PRC in the absence of measures.

(106) One importer/formulator fully cooperated with the Commission. It presented a submission in which it stated its position against measures because any increase in the price of the main input would reduce its profit margin on formulated glyphosate. A number of formulators who are currently not importing glyphosate acid originating in the PRC as a result of the existing measures stated that they would recommence sourcing the product from the PRC should measures expire. As it was found that most of the importers/formulators

deal with a range of products other than glyphosate, it is considered that, even if measures would have the effect of limiting a decrease in glyphosate acid prices, the impact of the measures on the overall business of these companies would be limited.

(107) Importers/formulators expect that lifting the measures would lead to lower prices for their glyphosate on the Community market, allowing them to expand their market share at the expense of the Community producers. However, the financial benefit from this would be limited, since the importers/formulators would be forced to pass on the bulk of their decrease in cost to their customers due to competition from other formulators also importing glyphosate originating in the PRC. Moreover, the importers/formulators should not obtain advantage through dumping since this creates an imbalance vis-à-vis the other competitors, namely the Community industry.

(108) For the abovementioned reasons, it is considered that the benefits afforded to the Community industry resulting from maintaining the measures would outweigh any marginal negative impact that may result for the importers/formulators concerned.

### 4. Interests of distributors and consumers

(109) The Commission received a submission by an association representing distributors and users of agrochemicals in the EU. This association put forward a number of allegations concerning the behaviour of the Community producers on the Community market to the detriment of independent distributors of agrochemicals.

(110) This association and an importer/formulator claimed that the Community market is heavily protected against imports through regulatory barriers, namely Council Directive 91/414/EC of 15 July 1991 concerning the placing of plant protection products on the market<sup>(1)</sup>, therefore making it unnecessary for measures to remain in place. This claim was repeated by the association following disclosure of the findings. It has to be noted that this Directive does not relate to trade

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2004/71/EC (OJ L 127, 29.4.2004, p. 104).

defence, but rather to environmental safety issues. It was nevertheless argued that obtaining the necessary information for registration of glyphosate is both costly and time consuming and acts as a deterrent for importers/formulators to import glyphosate from third countries. However, in practice this does not appear to be a severe limitation since a number of importers/formulators have succeeded in obtaining registration under Directive 91/414/EC. Furthermore, the cooperating importer/formulator stated that they would import glyphosate originating in the PRC should measures be lifted. Therefore, it is considered that Directive 91/414/EC does not close the Community market to imports of glyphosate from the PRC.

(111) The association further claimed that low prices of 'generic' standard formulated products produced by formulators based on acid or salt manufactured by a certain Community producer are compensated by high prices of 'branded' equivalent products sold by the same producer. It was claimed that these low priced 'generic' products would act as a deterrent toward the entry of other manufactures, including imports of glyphosate originating in the PRC, to the Community market. While it was confirmed that formulators purchase acid and/or salt from this Community producer at low prices, it could not be said that the Community producer was in a position to achieve high prices on its formulated products. As stated in recital 75, Community producers, including the producer concerned, were selling their standard formulated products (which are branded products) at a loss during the analysis period, which makes the claim that they would be in a position to obtain high prices on their 'brand' products implausible.

(112) This association also claimed that two Community producers operate a cartel in the Community because one of them appears to limit its market share in the Community while they could supply a much larger share of the Community market. In this regard, it should be noted that evidence presented in support of the claim was not conclusive, since factors other than the existence of a cartel could explain the alleged limitation of the market share by the Community producer. First of all, it has to be pointed out that the market share of not only the producer in question but also of other producers did not vary substantially over the analysis period. Secondly, sales on export markets could be made at higher prices, and hence the fact that the company did not sell more in the Community as opposed to outside of it could possibly be explained by other factors such as, for example, the company's own efforts to maximise returns on export markets which were more profitable than the Community market.

Furthermore, the production of the Community industry is significantly larger than consumption in the Community and, therefore, it is important economically for all Community manufacturers to export glyphosate to third countries in order to achieve high capacity utilisation in order to fully absorb their fixed costs. In this context, there is at present insufficient evidence to conclude that a cartel exists, involving the deliberate limitation of quantities supplied to the Community market to the detriment of consumers. Finally, the question of the existence or not of any cartel is a matter which should rather be addressed in the context of an anti-trust investigation. However, no anti-trust procedure has been initiated, to date, by the Commission on this matter.

(113) On the other hand, there was no indication concerning possible negative effects of the continuation of the anti-dumping measures as regards the glyphosate distributors.

(114) As regards the consumers of the product, these are essentially farmers. A reduction in the price of glyphosate would have a minimal effect on their profitability since this is only a relatively minor item in the overall cost of crop growing. It was established that the expiry of the measures would lead to an improvement in the profit margin of farmers which would be of the order of 0,1 %.

(115) For the abovementioned reasons, it is considered that any benefits afforded to the Community industry resulting from maintaining the measures would outweigh any marginal negative impact that may result for the distributors and consumers concerned.

##### 5. Conclusion on Community interest

(116) Should the existing measures expire, it is expected that the Community industry would suffer significant losses due to price depression on the Community market, which would either lead to a loss of market share against increased imports originating in the PRC or a further deterioration of their sales prices should they attempt to maintain their market share. Importers/formulators could benefit from an increasing market share due to cheaper supply of glyphosate originating in the PRC, but, compared to the losses incurred by the Community industry, the economic effect of this for importers/formulators would be minor in view of the need to pass on price reductions to their clients. There was no indication concerning possible negative effects of the continuation of the anti-dumping measures as regards the glyphosate distributors. For users, although these might benefit somewhat from lower prices if measures were removed, this would not have a significant effect on their profit margin or, consequently, on their activity.

(117) After weighing the interests of the various parties involved, the Commission concludes that there are no compelling reasons of Community interest against the continuation of measures.

Country	Company	Rate of AD duty
People's Republic of China	All exporting producers	29,9 %

### G. PROPOSED DUTIES

(118) The product type used as a reference to determine the duty rate was glyphosate acid because it is the common base of all forms of glyphosate exported from the PRC and produced in the Community. It was found that acid accounts for 55 % of the manufacturing costs of the equivalent quantity of standard 360 formulated product. Moreover, the acid form represented more than 90 % of the volume imported from the PRC during the investigation period. It is therefore considered that a duty established on the basis of data concerning glyphosate acid would be representative of all different forms of glyphosate imported from the PRC.

(119) For the purposes of calculating the price increase necessary in order to remove the injurious effects of dumping, it was considered appropriate to compare the prices of the dumped imports with the production costs of glyphosate acid of the Community industry increased by an amount sufficient to achieve a reasonable level of profit. The Commission took the view that a profit margin of 5 % represented a reasonable profit since glyphosate acid 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, as already considered in the original investigation.

(120) On this basis, the weighted average of the export prices for this product type for the IP, on a cif Community frontier level, was compared with the weighted average total cost of production of the Community producers, increased to give by a profit margin of 5 %. This comparison showed an underselling margin of 80 %.

(121) Since the injury margin is higher than the dumping margin found, the anti-dumping duties should be based on the dumping margin in accordance with the provisions of Article 7(2) of the basic Regulation.

(122) In view of the findings above, it is considered appropriate that the anti-dumping duties imposed by the original measures should be set at the level mentioned below:

(123) The anti-dumping duty in force in respect of glyphosate was extended by Regulation (EC) No 163/2002 to cover, in addition, imports of glyphosate consigned from Malaysia and Taiwan, whether declared as originating in Malaysia or Taiwan or not. As a consequence of the fact that the anti-dumping duty, as calculated in this review, replaces the duty in force, the anti-dumping duty to be applied to imports of the product concerned, as set out in recital 122, should be extended to imports of glyphosate consigned from Malaysia and Taiwan, whether declared as originating in Malaysia or Taiwan or not. The two exporting producers who were exempted from the measures as extended by Regulation (EC) No 163/2002 should also be exempted from the measures as imposed by this Regulation.

(124) In accordance with Article 20 of the basic anti-dumping Regulation, all parties concerned were informed of the essential facts and considerations on the basis of which it was intended to propose to reduce the level the existing measures. They were also granted a period within which to make representations subsequent to that disclosure. The comments received have been taken into consideration.

(125) It follows from the above that, based on the findings of the review investigations, the anti-dumping duties imposed by Regulation (EC) No 368/98, should be lowered to 29,9 % expressed as a percentage of the net free-at-Community frontier price before duty,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of glyphosate falling within CN codes ex 2931 00 95 (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.

2. The definitive anti-dumping duty mentioned in paragraph 1 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).

3. The definitive anti-dumping duty mentioned in paragraph 1 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).

4. The rate of duty applicable to the net free-at-Community-frontier price, before duty, of the products described in paragraphs 1 to 3, shall be 29,9%.

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

The anti-dumping duties shall be imposed for a period of five years from the date of entry into force of this Regulation.

*Article 3*

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

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

Done at Brussels, 24 September 2004.

*For the Council*

*The President*

L. J. BRINKHORST

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