Notice of initiation of an expiry and an interim review of the antidumping measures applicable to imports of glyphosate originating in the People's Republic of China

(2003/C 36/03)

Following the publication of a notice of impending expiry [1] of the anti-dumping measures in force on imports of glyphosate originating in the People's Republic of China, (country concerned), the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 [2], as last amended by Council Regulation (EC) No 1972/2002 [3] (the Basic Regulation). The Commission also has evidence which justifies the initiation of a review under Article 11(3) of the Basic Regulation.

1. **Request for review**

The request was lodged on 18 November 2002 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.

2. **Product**

The product under review is glyphosate, which can be produced in different grades or forms of concentration of which the main ones are the following: formulated (generally with 36 % glyphosate content), salt (with 62 %), cake (with 84 %) and acid (with 95 %) originating in the People's Republic of China (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). These CN codes are given only for information.

3. **Existing measures**

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 368/98 [4], as last amended by Council Regulation (EC) No 1086/2000 [5] and extended to imports of the product concerned which are consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not, by Council Regulation (EC) No 163/2002 [6].

4. **Grounds for the review**

4.1. ***Grounds for the expiry review***

The request is based on the grounds that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

The applicant has provided evidence that imports of the product concerned from the People's Republic of China have continued to enter the Community in significant quantities and at dumped prices. The allegation of continuation of dumping is based on a comparison of a normal value with the export prices of the product concerned to the Community.

In view of the provisions of Article 2(7) of the Basic Regulation, the applicant has established normal value for the People's Republic of China on the basis of a normal value in an appropriate market economy country, which is mentioned in point 5.1(d) of this notice. The allegation of continuation of dumping is based on a comparison of normal value, as set out in the proceeding sentence, with the export prices of the product concerned when sold for export to the Community.

On this basis, the dumping margins calculated are significant for the exporting country concerned.

Concerning injury aspects, it is alleged that the prices of the imported product concerned have continued, among other consequences, to have a negative impact on level of prices charged by the Community industry, resulting in substantial adverse effects on the financial situation of the Community industry.

The applicant further alleges the likelihood of further injurious dumping. In this respect the applicant alleges that since measures have been absorbed and circumvented, the injurious dumping practices would be likely to recur. Also the applicant has presented evidence showing that Chinese exports are dumped when sold to other third country markets, pointing to the likelihood of recurrence of dumping should measures expire.

Furthermore the applicant presents evidence that, should measures be allowed to lapse, the current import level of the product concerned is likely to increase due to the potential of the manufacturing facilities of the exporting producers and their spare capacities in the country concerned and the existence of well-established distribution channels in the Community for these imports.

In addition, the applicant alleges that the situation of the Community industry is fragile and that any further substantial increase of imports at dumped prices from the countries concerned would be likely to cause even further injury of the Community industry should measures be allowed to lapse.

[1] OJ C 120, 23.5.2002, p. 3.
[2] OJ L 56, 6.3.96, p. 1.
[3] OJ L 305, 7.11.2002, p. 1.
[4] OJ L 47, 18.2.98, p. 1.
[5] OJ L 124, 25.5.2000, p. 1.
[6] OJ L 30, 31.1.2002, p. 1.

4.2. ***Grounds for the interim review***

The Commission has decided on its own initiative to initiate an interim review in order to examine the appropriateness of the measures, as the evidence presented in the request shows that the level of the measure is not sufficient to counteract the injurious dumping practices, which calls for a full interim review of the measures encompassing all aspects of the proceeding.

5. **Procedure**

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry and an interim review, the Commission hereby initiates a review in accordance with Article 11(2) and 11(3) of the Basic Regulation.

5.1. ***Procedure for the determination of likelihood of dumping and injury***

The investigation will determine whether the expiry of the measures would be likely, or unlikely, to lead to a continuation or recurrence of dumping and injury, as well as the need for the continuation, removal or amendment of the existing measures.

(a) *Sampling*

In view of the apparent number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 17 of the Basic Regulation.

(i) Sampling for exporters/producers in the People's Republic of China.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in paragraph 6(b)(i) of this notice:

— name, address, e-mail address, telephone, and fax, and/or telex numbers and contact person,

— the turnover in local currency and the volume in tonnes of the product concerned sold for export to the Community during the period 1 January 2002 to 31 December 2002,

— the turnover in local currency and the sales volume in tonnes for the product concerned on the domestic market during the period 1 January 2002 to 31 December 2002,

— whether the company intends to submit a claim for an individual margin or market economy status (individual margins and market economy status can only be claimed by producers),

— the precise activities of the company with regard to the production of the product concerned,

— the production volume in tonnes of the product concerned, the production capacity and the investments in production capacity during the period 1 January 2002 to 31 December 2002,

— the names and the precise activities of all related companies [1] involved in the production and/or selling (export and/or domestic) of the product concerned,

— any other relevant information that would assist the Commission in the selection of the sample,

— an indication of whether the company or companies agree to their inclusion in the sample, which implies replying to a questionnaire and accepting an on-the-spot investigation of their response,

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the exporting country, and any known associations of exporters/producers.

(ii) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in paragraph 6 (b)(i) of this notice:

— name, address, e-mail address, telephone, and fax, and/or telex numbers and contact person,

— the total turnover in euro of the company during the period 1 January 2002 to 31 December 2002,

— the total number of employees,

— the precise activities of the company with regard to the product concerned and the volume in tonnes of the product concerned during the period 1 January 2002 to 31 December 2002,

— the volume in tonnes and value in euro of imports into and resales made in the Community market during the period 1 January 2002 to 31 December 2002, of the imported product concerned originating in the People's Republic of China,

[1] For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

— the names and the precise activities of all related companies [1] involved in the production and/or selling of the product concerned,

— any other relevant information that would assist the Commission in the selection of the sample,

— an indication of whether the company or companies agree to their inclusion in the sample, which implies replying to a questionnaire and accepting an on-the-spot investigation of their response.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

(iii) Final selection of the samples

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within the time limit set in paragraph 6(b)(ii) of this notice.

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the samples must reply to a questionnaire within the time limit set in paragraph 6(b)(iii) of this notice and must cooperate within the framework of the investigation.

If sufficient cooperation is not forthcoming, the Commission will base its findings, in accordance with Articles 17(4) and 18 of the Basic Regulation, on the facts available.

(b) *Questionnaires*

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the Community industry and to any association of producers in the Community, to the sampled exporters/producers in the People's Republic of China to any association of exporters/producers in the People's Republic of China, to the sampled importers, to any association of importers named in the request or which cooperated in the investigation leading to the measures subject to the present review, and to the authorities of the exporting country concerned.

In any event, all parties should contact the Commission forthwith by fax in order to find out whether they are listed in the request and if necessary request a questionnaire within the time limit set in paragraph 6(a)(i), given that the time limit set in paragraph 6(a)(ii) of this notice applies to all interested parties.

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

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in paragraph 6(a)(ii) of this notice.

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in paragraph 6(a)(iii) of this notice.

(d) *Selection of the market economy country*

In the previous investigation Brazil was used as an appropriate market economy country for the purpose of establishing normal value in respect of the People's Republic of China. The Commission envisages to use Brazil again for this purpose. Interested parties are hereby invited to comment on the appropriateness of this country within the specific time limit set in paragraph 6(c) of this notice.

(e) *Market economy status*

For those exporters/producers in the People's Republic of China which claim and provide sufficient evidence that they operate under market economy conditions, i.e. that they meet the criteria laid down in Article 2(7)(c) of the Basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the Basic Regulation. Exporters/producers intending to submit duly substantiated claims must do so within the specific time limit set in paragraph 6(d) of this notice. The Commission will send claim forms to all exporters/producers in the People's Republic of China who have either been included in the sample or who have requested an individual margin, as well as to the authorities of the People's Republic of China.

5.2. ***Procedure for the assessment of Community interest***

In accordance with Article 21 of the Basic Regulation and in the event that a likelihood of a continuation of dumping and injury is confirmed, as well as a need to change the form of the measures, a decision will be reached as to whether the maintenance or the amendment of the existing anti-dumping measures would not be against the Community interest. For this reason the Community industry, importers, their representative associations, representative users and representative consumer organisations, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in paragraph 6(a)(ii) of this notice, make themselves known and provide the Commission with information. The parties which have acted in conformity with the precedent sentence may request a hearing, setting the particular reasons why they should be heard, within the time limit set in paragraph 6(a)(iii) of this notice. It should be noted that any information submitted pursuant to Article 21 will only be taken into account if supported by factual evidence at the time of submission.

[1] For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

6. **Time limits**

(a) *General time limits*

(i) For parties to request a questionnaire or other claim forms

All interested parties who did not cooperate in the investigation leading to the measures subject to the present review should request a questionnaire or other claim forms as soon as possible, but not later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

(ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the Basic Regulation depends on the party's making itself known within the aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limit specified in paragraph 6(b)(iii) of this notice.

(iii) Hearings

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

(b) *Specific time limit in respect of sampling*

(i) The information specified in paragraph 5.1(a)(i) and (ii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(ii) All other information relevant for the selection of the sample as referred to in 5.1(a)(iii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

(c) *Specific time limit for the selection of the market economy country*

Parties to the investigation may wish to comment on the appropriateness of Brazil which, as mentioned in paragraph 5.1(d) of this notice, is envisaged as a market-economy country for the purpose of establishing normal value in respect of the People's Republic of China. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

(d) *Specific time limit for submission of claims for market economy status*

Duly substantiated claims for market economy status, as mentioned in paragraph 5.1(e) of this notice, must reach the Commission within 21 days of the date of the selection of any sample or as determined by the Commission.

7. **Written submissions, questionnaire replies and correspondence**

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified), and must indicate the name, address, e-mail address, telephone and fax, and/or telex numbers of the interested party.

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate B
Office: J-79 5/16
B-1049 Brussels
Fax (32-2) 295 65 05
Telex: COMEU B 21877.

8. **Non-cooperation**

In cases in which any interested party refuses access to or otherwise does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the Basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available.