

COMMISSION REGULATION (EC) No 2593/2001

of 28 December 2001

amending Regulation (EC) No 909/2001 as regards registration of imports of glyphosate produced by one Malaysian and one Taiwanese exporting producer

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

originating in Malaysia or Taiwan or not, as of 10 May 2001.

Having regard to the Treaty establishing the European Community,

- (5) Article 2(3) of the initiating Regulation provided that imports should be exempted from registration if they were accompanied by a customs certificate certifying that the importation does not constitute, circumvention.

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Regulation (EC) No 2238/2000 ⁽²⁾, and in particular Articles 13 and 14 thereof,

After consulting the Advisory Committee,

B. REQUESTS FOR EXEMPTION

Whereas:

- (6) In the course of the investigation, the Commission received requests for exemption from the registration or measures from four unrelated importers and two cooperating exporting producers, Crop Protection (M) Sdn Bhd. ('Crop Protection') and Sinon Corporation.

A. PROCEDURE

- (1) By Regulation (EC) No 368/98 ⁽³⁾, the Council imposed an anti-dumping duty of 24 % on imports of glyphosate originating in the People's Republic of China ('the PRC'). By Regulation (EC) No 1086/2000 ⁽⁴⁾, the rate of duty applicable was increased to 48 % as a result of the investigation into the absence of movement, or insufficient movement of, the resale prices or subsequent selling prices in the Community pursuant to Article 12 of Regulation (EC) No 384/96 ('the basic Regulation').
- (2) On 26 March 2001, the Commission received a request pursuant to Article 13(3) of the basic Regulation from the European Glyphosate Association (EGA) to investigate the alleged circumvention of the anti-dumping measures imposed on imports of glyphosate originating in the PRC by imports of glyphosate consigned from Malaysia or Taiwan. The request was made on behalf of a major proportion of Community producers of glyphosate and contained sufficient evidence regarding the factors set out in Article 13(1) of the basic Regulation.
- (3) The Commission initiated an investigation into the alleged circumvention by Regulation (EC) No 909/2001 ⁽⁵⁾ ('the initiating Regulation').
- (4) Pursuant to Articles 13(3) and 14(5) of the basic Regulation, Article 2 of the initiating Regulation instructed the customs authorities to register imports of glyphosate consigned from Malaysia or Taiwan, whether declared as

- (7) Given that the alleged circumvention was taking place outside the Community, exemption of imports from registration or measures was dependent on the findings in respect of the exporters. No decision could therefore be taken by the Commission purely on the basis of the exemption requests presented by individual importers. The importers will however benefit from an exemption from registration or measures to the extent that their imports are from exporters which have been granted such an exemption.
- (8) Any decision concerning exporters should be limited to exemption from registration at this stage. If the Council subsequently adopts a Regulation extending the anti-dumping measures pursuant to Article 13 of the basic Regulation, it may decide to exempt certain exporters from such extended measures.

C. FINDINGS IN RESPECT OF CROP PROTECTION AND SINON CORPORATION

- (9) Among others, Crop Protection and Sinon Corporation replied to the questionnaire sent by the Commission to the producers and exporters in Malaysia and Taiwan named in the request, to the importers in the Community and to the exporters in the PRC known to the Commission as well as to other interested parties who came forward within the prescribed time limit. The Commission carried out verification visits at the premises of Crop Protection (Klang, Selangor D.E., Malaysia) and Sinon Corporation (Taichung, Taiwan).

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 257, 11.10.2000, p. 2.

⁽³⁾ OJ L 47, 18.2.1998, p. 1.

⁽⁴⁾ OJ L 124, 25.5.2000, p. 1.

⁽⁵⁾ OJ L 127, 9.5.2001, p. 35.

(10) Crop Protection transformed purchased glyphosate acid, part of which was originating in the PRC, into salt or formulated products. However, their purchases of PRC origin acid increased less significantly than their purchases of non-PRC origin acid and did not show a constant movement (plunge in 1998, increase up to 2000, decrease within the IP). Moreover, most of the supply of PRC origin acid was caused by Monsanto (M) Sdn. Bhd. (Malaysia) ⁽¹⁾ due to its inability to supply Crop Protection with the US origin acid it had ordered. Direct purchases from another supplier in the PRC were minor. Additionally, to satisfy customers' requests, Crop Protection limited the use of acid originating in the PRC for production of glyphosate exported to the Community. It was therefore considered that Crop Protection demonstrated to the satisfaction of the Commission that the change in the pattern of trade in their respect had a due cause other than the imposition of the duty on imports of glyphosate originating in the PRC and did not constitute circumvention.

(11) Sinon Corporation produces glyphosate starting from the initial stage of producing glyphosate acid and also formulates purchased glyphosate acid which does not originate in the PRC, both operations being carried out in Taiwan. The investigation has shown that Sinon has exported to the Community its own produced product, with the exception of limited quantities of formulated glyphosate purchased from a Malaysian company and shipped directly from Malaysia to the Community. It was therefore considered that Sinon Corporation demonstrated to the satisfaction of the Commission that the change in the pattern of trade in their respect had a due cause other than the imposition of the duty on imports of glyphosate originating in the PRC and did not constitute circumvention.

(12) In the light of the above findings, registration of imports of glyphosate consigned from Malaysia and produced by Crop Protection and of glyphosate consigned from Taiwan and produced by Sinon Corporation should cease.

(13) Given that exemption from registration is made in respect of the exporting producers in this case, it was considered unnecessary and disproportionate to request each importer importing from Crop Protection or Sinon Corporation to apply for a customs certificate exempting their imports from registration. The Commission there-

fore considers it appropriate to amend its initiating Regulation in so far as it provides for the registration of imports of glyphosate consigned from Malaysia or Taiwan (whether declared as originating in Malaysia or Taiwan or not).

(14) This Regulation is based on findings specific to Crop Protection and Sinon Corporation and does not prejudice any decision which the Council may take to extend the existing anti-dumping measures on glyphosate originating in the PRC to the same product consigned from Malaysia or Taiwan (whether declared as originating in Malaysia or Taiwan or not).

(15) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to cease registration of imports of glyphosate produced by Crop Protection and of glyphosate produced by Sinon Corporation and were given the opportunity to comment. No comments which were of a nature to change the above conclusions were received.

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph shall be added to Article 2 of Regulation (EC) No 909/2001:

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

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

Article 2

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

⁽¹⁾ Related to Monsanto Europe, one of the complainants.

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

Done at Brussels, 28 December 2001.

For the Commission
Pascal LAMY
Member of the Commission
