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EUROPEAN COMMISSION

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2010/0332 (NLE)

Proposal for a

COUNCIL IMPLEMENTING REGULATION

**terminating the anti-dumping proceeding on imports of glyphosate originating in the
People's Republic of China**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the proceeding concerning imports of glyphosate originating in the People's Republic of China.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 1683/2004¹ of 24 September 2004 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China.

Commission Decision No 383/2009² of 14 May 2009 suspending the definitive anti-dumping duties imposed by Council Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China.

Implementing Regulation of the Council (EU) No 126/2010³ of 11 February 2010 extending the suspension of the definitive anti-dumping duty imposed by Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

¹ OJ L 303, 30.09.2004, p. 1.
² OJ L 120, 15.05.2009, p. 20
³ OJ L 40, 13.02.2010, p. 1

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. **LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

On 29 September 2009, the Commission initiated an expiry review of the anti-dumping measures in force in respect of glyphosate originating in the People's Republic of China. The request was lodged by the European Glyphosate Association ('the applicant') on behalf of producers representing the entire Union production of glyphosate.

The purpose of this investigation was to examine whether the expiry of measures would be likely to result in a continuation or recurrence of dumping and recurrence of injury to the Union industry.

In the course of the investigation, the applicant formally withdrew its request for an expiry review.

Following this withdrawal, the Commission has not identified arguments suggesting that Union interest might justify pursuing the review investigation and therefore suggests terminating the investigation and repealing the measures.

It is therefore proposed that the Council adopts the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* at the earliest opportunity and in any event no later than 22 December 2010.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁴ ('the basic Regulation') and in particular Article 9 and 11(2) thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Measures in force

- (1) Following a review investigation carried out pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 1683/2004⁵, imposed a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China currently falling within CN codes ex 2931 00 99 and ex 3808 93 27 (the 'product concerned'). This duty had been extended to imports of glyphosate consigned from Malaysia (whether declared as originating in Malaysia or not) with the exception of those produced by Crop Protection (M) Sdn. Bhd. and to imports of glyphosate consigned from Taiwan (whether declared as originating in Taiwan or not) with the exception of those produced by Sinon Corporation. The rate of the anti-dumping duty is 29.9 %.
- (2) By Decision 2009/383/EC⁶, the Commission suspended the definitive anti-dumping duties for a period of 9 months, with effect from 16 May 2009. Subsequently, by Regulation 126/2010⁷, the Council extended the suspension for a period of 1 year, with effect from 14 February 2010.

1.2. Request for review

⁴ OJ L 343, 22.12.2009, p. 51.

⁵ OJ L 303, 30.9.2004, p. 1.

⁶ OJ L 120, 15.5.2009, p. 20.

⁷ OJ L 40, 13.2.2010, p. 1.

- (3) Following the publication of a notice of impending expiry⁸ of the anti-dumping measures in force on imports of glyphosate originating in the People's Republic of China, the Commission has received on 29 June 2009 a request for review pursuant to Article 11(2) of the basic Regulation.
- (4) The request was lodged by the European Glyphosate Association ('the applicant') on behalf of producers representing the entire Union production of glyphosate.
- (5) The request contained prima facie evidence showing that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

1.3. Initiation

- (6) Accordingly, the Commission, after consultation of the Advisory Committee, the Commission initiated, by a notice published in the *Official Journal of the European Union*⁹, an anti-dumping proceeding concerning imports into the European Union of glyphosate currently falling within CN codes ex 2931 00 99 and ex 3808 93 27 and originating in the People's Republic of China.
- (7) The Commission officially advised the exporting producers, importers concerned, the representatives of the People's Republic of China, the representative users and the Union producers of the initiation of the review investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

2. WITHDRAWAL OF THE REQUEST

- (8) By a letter dated 21 September 2010 to the Commission, the applicant formally withdrew its request.
- (9) In accordance with Article 9(1) and Article 11(2) of the basic Regulation, a proceeding may be terminated where the request for review is withdrawn unless such a termination would not be in the Union interest.
- (10) It was considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Union interest. Interested parties were informed accordingly and were given the opportunity to comment. However, no comments were received which could alter this consideration.
- (11) It was therefore concluded that the anti-dumping expiry review proceeding concerning imports into the Union of glyphosate originating in the People's Republic of China should be terminated and the existing measures should be repealed.

⁸ OJ C 115, 20.5.2009, p. 19.

⁹ OJ C 234, 29.9.2009, p. 9.

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping measures concerning imports of glyphosate currently falling within CN codes ex 2931 00 99 and ex 3808 93 27 and originating in the People's Republic of China, are hereby repealed and the proceeding concerning these imports is terminated.

Article 2

This Regulation shall enter into force on the day following that of 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 in Brussels at [...],

For the Council
The President