

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of potassium chloride originating in Belarus and Russia

(2010/C 323/10)

The European Commission (Commission) has received a request for a partial interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation).

1. Request for review

The request was lodged by Fintec UK Limited (the applicant), an importer and distributor of potassium chloride originating in Belarus and Russia.

The review is limited in scope to the examination of the level of injury.

2. Product

The product under review is potassium chloride currently falling within CN codes 3104 20 10, 3104 20 50, 3104 20 90, and special mixtures (i.e. potassium chloride containing additional fertilising elements, with a potassium content evaluated as K₂O, by weight, equal to or exceeding 35 % but not exceeding 62 % on the dry anhydrous product) currently falling within CN codes ex 3105 20 10 (TARIC codes 3105 20 10 10 and 3105 20 10 20), ex 3105 20 90 (TARIC codes 3105 20 90 10 and 3105 20 90 20), ex 3105 60 90 (TARIC codes 3105 60 90 10 and 3105 60 90 20), ex 3105 90 91 (TARIC codes 3105 90 91 10 and 3105 90 91 20), ex 3105 90 99 (TARIC codes 3105 90 99 10 and 3105 90 99 20), originating in Belarus and Russia (the product concerned).

3. Existing measures

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 1050/2006 ⁽²⁾ on imports of potassium chloride originating in Belarus and Russia.

4. Grounds for the review

The request pursuant to Article 11(3) is based on *prima facie* evidence, provided by the applicant, that, as far as the injury is

concerned, the circumstances on the basis of which the existing measures were imposed have changed and that these changes are of lasting nature.

The applicant provided *prima facie* evidence showing that the continued imposition of the measure at its current level is no longer necessary to offset the effects of injurious dumping. In particular, the applicant alleges that due to a long-term growth in demand and a tight demand-supply situation, since the latest expiry review investigation prices of potassium chloride in the Union remained constantly far above the injury elimination level and the profitability of the Union industry considerably exceeded the normal profitability rate. A comparison of the Union industry prices and the prices of imports from Belarus and Russia indicates that the injury margin appears to be substantially lower than the current level of the measure.

Therefore, the continued imposition of measures at the existing level appears to be no longer necessary to offset the effects of injurious dumping.

5. Procedure for the determination of injury

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

The investigation will determine whether the current level of measures is appropriate to counteract the injurious dumping.

(a) Sampling

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 191, 12.7.2006, p. 1.

(i) 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 point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone, and fax numbers and contact person,
- total turnover during the period 1 October 2009 to 30 September 2010,
- the precise activities of the company with regard to the product concerned,
- the volume in tonnes and value in EUR of imports into and resales made in the Union market during the period 1 October 2009 to 30 September 2010 of the imported product concerned originating in Belarus and Russia,
- the names and the precise activities of all related companies ⁽¹⁾ involved in the production and/or sales of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

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.

⁽¹⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

(ii) Final selection of the sample

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

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

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

If sufficient cooperation is not forthcoming, the Commission may base its findings, in accordance with Articles 17(4) and 18 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

(b) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the Union producers, to the known exporters/producers in Belarus and Russia, to the sampled importers, to any known association of importers, and to the authorities of the exporting countries concerned. This information and supporting evidence should reach the Commission within the time limit set in point 6(a)(ii).

(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 point 6(a)(ii).

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 point 6(a)(iii).

6. Time limits**(a) General time limits****(i) For parties to request a questionnaire**

All interested parties should request a questionnaire 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 37 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 point 6(b)(iii).

- (iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 37-day time limit.

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

- (i) The information specified in points 5(a)(i) 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(a)(ii) 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.

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 numbers of the interested party. All written

submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

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Directorate-General for Trade
Directorate H
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8. Non-co-operation

In cases in which any interested party refuses access to or 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, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

9. Schedule of the investigation

The investigation shall be concluded, according to Article 11(5) of the basic Regulation, within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

10. Processing of personal data

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾.

⁽¹⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

11. **Hearing officer**

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to the file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details, interested parties may consult the Hearing Officer's web pages on the website of Directorate-General for Trade (<http://ec.europa.eu/trade>).
