

**COUNCIL REGULATION (EC) No 1675/2003
of 22 September 2003**

amending Regulation (EC) No 1995/2000 imposing, *inter alia*, a definitive anti-dumping duty on imports of solution of urea and ammonium nitrate originating in Algeria, Belarus, Lithuania, Russia and Ukraine

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⁽¹⁾, hereinafter referred to as 'the basic Regulation', and in particular Article 8 and Article 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. EXISTING MEASURES

(1) Pursuant to Regulation (EC) No 1995/2000⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate, hereinafter referred to as 'UAN', originating, *inter alia*, in Lithuania. The form of the duty set out in that Regulation was a specific duty of EUR 3,98 per tonne for all Lithuanian exporting producers.

B. REQUEST FOR A REVIEW

(2) In September 2002, a request for a partial interim review pursuant to Article 11(3) of the basic Regulation was lodged by SC Achema, hereinafter referred to as 'the applicant', an exporting producer in Lithuania. The request was limited in scope to the examination of the form of the measure and, in particular, to the examination of the acceptability of an undertaking offered by the applicant.

(3) The request was based on the grounds that the applicant committed itself to a price discipline in respect of UAN within the framework of another anti-dumping proceeding concerning urea and presented evidence that it was ready to provide, also in the framework of the UAN proceeding, an undertaking of a similar nature, which would remove the injurious effects of dumping and could be monitored.

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission published a notice in the *Official Journal of the European Communities*⁽³⁾ and commenced an investigation.

C. PROCEDURE

(5) The Commission officially advised the authorities of the exporting country of the initiation of the interim review and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing. The European Fertilizer Manufacturers Association, on behalf of the European complainant producers of the original investigation, hereinafter referred to as 'the Community industry', requested, within the time limits, to take part in this investigation as an interested party.

(6) The applicant made the Commission a formal offer of price undertaking.

(7) The Commission further sought and verified all the information it deemed necessary for the purpose of examining the acceptance of this undertaking and all the aspects relating to the monitoring of it. A verification visit was carried out at the premises of the applicant.

(8) The applicant and the Community industry were informed of the facts and considerations of the investigation and were given an opportunity to comment.

D. INVESTIGATION

(9) The applicant exports three kinds of nitrogen fertilisers to the EU: urea, ammonium nitrate, hereinafter referred to as 'AN', and UAN. Urea and UAN originating in Lithuania are subject to anti-dumping measures in the form of specific duties, imposed by Regulations (EC) No 1995/2000 and (EC) No 92/2002⁽⁴⁾ respectively.

(10) Pursuant to Commission Decision 2002/498/EC⁽⁵⁾, an undertaking offered by the applicant concerning imports of urea was accepted. By this undertaking, the applicant accepted, in order to avoid cross-compensation via exports of other fertilisers, to respect a pricing discipline and to report exports to the Community for its other two fertilisers, i.e. the ammonium nitrate and UAN as well. The applicant's exports of UAN were as a result found to be subject to both a minimum import price and an anti-dumping duty (by nature of Regulation (EC) No 1995/2000).

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

⁽²⁾ OJ L 238, 22.9.2000, p. 15.

⁽³⁾ OJ C 314, 17.12.2002, p. 2.

⁽⁴⁾ OJ L 17, 19.1.2002, p. 1.

⁽⁵⁾ OJ L 168, 27.6.2002, p. 51.

(11) The undertaking offered by the applicant in the framework of the current investigation enables its exports of UAN to be subject to a sole minimum import price, hereinafter referred to as 'MIP'. The MIP is at a level that eliminates the injurious effects of dumping found in the original investigation. The reporting obligations are as strict as for urea, thus allowing an efficient monitoring in conjunction with the undertaking on urea. In addition, a clause on the breach of the relationship of trust between the Commission and the applicant guarantees the efficiency of both undertakings for urea and UAN.

(12) The Community industry opposed the acceptance of an undertaking. It alleged that the actual quantities of UAN exported by the applicant for the period 2002 could not be supplied by its effective production capability. The Commission sought from the applicant, and the latter provided, detailed information concerning production capacity, sales and purchases of the three nitrogen fertilisers, i.e. urea, AN and UAN, for the last three calendar years. All of this information was verified on the spot and no irregularity of the nature alleged by the Community industry was found. Thus, the allegations of the Community industry were considered to be unfounded.

(13) The Community industry further claimed that, in line with the principle of non-discrimination, the applicant should not be given more favourable treatment than other countries found to be dumping, since in the great majority of recent anti-dumping cases concerning nitrogen fertilisers, the Community has consistently argued that for reasons of efficiency and to avoid manipulation and malpractice, specific anti-dumping duties are the most appropriate measures to be applied. Regarding the discriminatory treatment, it should be noted that each undertaking offer has to be examined on its own merits on the basis of the criteria laid down in Article 8 of the basic Regulation. Thus, undertaking offers can be accepted only in cases where they have the effect of eliminating the injurious dumping and allow effective monitoring. In this respect, it is noted that the main problem for accepting undertakings from other countries was the risk of circumvention in the form of cross-compensation with other products. However, in this case this risk is seriously limited, since the applicant has offered and has been respecting MIPs for the other fertilisers that it exports to the Community with which cross-compensation could arguably take place. Regarding efficiency and effective monitoring of undertakings in respect of similar cases, the experience already obtained from two undertakings concerning urea (one from a Bulgarian exporting producer and one from the applicant) and one concerning UAN (from an Algerian exporting producer), which have been in place for certain time, did not indicate that they had been inefficient. In this respect, it should be noted that the Commission, during the on-the-spot visit at the premises of the applicant, verified all the reports submitted by it in the framework of its undertaking for urea and did not

find any irregularity, manipulation or malpractice. Therefore, this claim was rejected.

(14) Finally, the Community industry claimed that any price undertaking should stipulate both an ex-works and a cif frontier level in order for all normal costs between ex-works and cif frontier to be accounted for. Regarding this claim, it is noted that the MIP offered by the applicant is based on an ex-works level and that the applicant is obliged to report detailed costs associated with its exports when made at a different level (i.e. cif, fob, etc.). This means that indeed all costs between ex-works and cif level will be accounted for when sales are made at cif level. Therefore, the claim made by the Community industry was rejected.

E. UNDERTAKING

(15) In view of the foregoing, the offer of an undertaking was accepted by the Commission in Decision 2003/671/EC ⁽¹⁾.

(16) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented to the relevant customs authority, exemption from the duty should be conditional on presentation of a commercial invoice containing the information listed in the Annex to Commission Regulation (EC) No 617/2000 ⁽²⁾, which is necessary for customs to ascertain that shipments correspond to the commercial documents at the required level of detail. Where no such invoice is presented, or when it does not correspond to the product concerned presented to customs, the appropriate rate of anti-dumping duty should instead be payable.

(17) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation.

(18) In view of the acceptance of the undertaking offer, it is necessary to amend Regulation (EC) No 1995/2000 accordingly.

F. MODIFICATION OF NAME AND ADDRESS

(19) In the course of this investigation, the applicant informed the Commission that it had changed its name and address. The name change was due to the fact that the previous company form of the applicant, i.e. Joint Stock Company, no longer exists in Lithuania. The new name of the applicant is Stock Company Achema. The change of its address was due to the change in the Lithuanian postal system.

⁽¹⁾ See page 35 of this Official Journal.

⁽²⁾ OJ L 75, 24.3.2000, p. 3.

- (20) The Commission has examined this information, which demonstrated that all the applicant's activities linked to the manufacturing, sales and exports of fertilisers (AN, UAN and urea) are unaffected by these changes,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1995/2000 is hereby amended as follows:

1. In Article 1(2), the row concerning Lithuania shall be replaced by the following:

Lithuania	All companies	EUR 3,98	A999'
-----------	---------------	----------	-------

2. Article 2(1), shall be replaced by the following:

'1. Imports declared for release into free circulation under the following TARIC additional codes which are produced and directly exported (i.e. shipped and invoiced) by a company named below to a company in the Community

acting as an importer shall be exempt from the anti-dumping duty imposed by Article 1 provided that such imports are imported in conformity with paragraph 2 of this Article.

Country	Company	TARIC additional code
Algeria	Fertalge Industries spa 12, Chemin AEK Gadouche Hydra Alger	A107
Lithuania	Stock Company Achema Jonalaikio k., Ruklos sen., Jonavos r. LT-5005	A375'

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 at Brussels, 22 September 2003.

For the Council

The President

R. BUTTIGLIONE