



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ammonium nitrate originating in Poland and Ukraine, and terminating the anti-dumping proceeding in respect of imports originating in Lithuania

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 20 March 2004, the Commission initiated a review investigation with regard to, inter alia, imports of ammonium nitrate originating in Russia or Ukraine. The purpose of this review was to examine whether these measures should be amended to take account of the enlargement of the Community.

The examination showed that it was in the interests of the Community to provide for the temporary adaptation of the measures in force to avoid an excessive negative impact on importers and users in EU10.

It is therefore proposed to accept temporary undertakings from the exporters concerned with elements for minimum prices and quantitative ceilings corresponding to their traditional export volumes to EU10.

Member States were consulted and did not oppose the proposal.

It is proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal no later than 20 May 2004.

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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 Community¹, as last amended by Regulation (EC) No 461/2004² (“the basic Regulation”), and in particular Articles 8, 11(3), 21 and 22 (c) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) Following an expiry and an interim review, by Regulation (EC) No 658/2002³, the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate (“the product concerned”) originating in the Russian Federation (“Russia”). By Regulation (EC) No 132/2001⁴, the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine.
- (2) The measures are a specific duty of 47,07 EUR/tonne in the case of Russia and 33,25 EUR/tonne in the case of Ukraine.

¹ OJ L 56, 6.3.1996, p. 1.

² OL L 77, 13.3.2004, p. 12.

³ OJ L 102, 18.4.2002, p. 1.

⁴ OJ L 23, 25.1.2001, p. 1.

2. Investigation

- (3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union*⁵ the initiation of a partial interim review of the measures in force (“the measures”) pursuant to Articles 11(3) and 22 (c) of the basic Regulation.
- (4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 (“Enlargement”) and, bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

3. Parties concerned by the investigation

- (5) All interested parties known to the Commission, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 (“the EU10”) were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

- (6) In this regard, the following interested parties made their views known:

- (a) Community producers Association:

European Fertilizers Manufacturers Association (EFMA)

- (b) Exporting producers:

Nak Azot, Moscow, Russia

OAO “Kirovo – Chepetsky Chimkombinat, Kirovo – Chepetsk, Russia

Cherkasy Azot, Cherkasy, Ukraine

JSC Acron, Vellky Novgorod, Russia

B. PRODUCT UNDER CONSIDERATION

- (7) The product under consideration is the same as in the original investigation, i.e. ammonium nitrate (‘AN’ or ‘product under consideration’), a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid and the nitrogen content exceeds 28 % by weight in pillled or granular form.
- (8) The product concerned currently falls within CN codes 3102 30 90 (ammonium nitrate other than in aqueous solutions) and 3102 40 90 (mixtures of ammonium nitrate with

⁵ OJ C 70, 20.3.2004, p. 15.

calcium carbonate or other inorganic nonfertilising substances, with a nitrogen content exceeding 28 % by weight).

C. RESULTS OF THE INVESTIGATION

1. Submissions of interested parties in exporting countries

- (9) Three Russian and one Ukrainian exporting producers, Russian and Ukrainian authorities claimed that due to the high level of the anti-dumping duties and as a consequence of the extension of the measures to the EU10, their traditional trade flows to the acceding States would be significantly disrupted.
- (10) In particular, they claimed that the sudden sharp price increases triggered by the specific price anti-dumping duties rendered the product prohibitively expensive for the end users in the EU10.

2. Comments received from the Community Industry

- (11) The Community Industry stated that although average prices in the EU10 were significantly lower than those in the European Union as constituted immediately prior to 1 May 2004 (“the EU15”), it would not oppose any proposals for intermediate measures to be taken over a transitional period which do not adversely affect its situation.

3. Comments received from Member States

- (12) The Spanish authorities expressed concerns, however, as the remaining Member States, they did not oppose the transitional measures proposed by the Commission.
- (13) It was claimed that several EU10 Member States had imposed measures on the product concerned and that these measures ensured a level of protection in EU10 Member States which lapsed by the Enlargement. The measures in place were:
 - (a) Safeguard quotas imposed in Poland in June 2002 on the imports of ammonium nitrate originating in the Russian Federation and in December 2002 safeguard measures on imports of ammonium nitrate originating in Ukraine;
 - (b) Safeguard measures imposed in Hungary in July 2003 with additional duty of 11.600 HUF /t on imports of ammonium nitrate originating in the Russian Federation and Ukraine;
 - (c) Safeguard measures imposed in Czech Republic in February 2003 with additional duty of 16 % on the imports of ammonium nitrate originating in Ukraine and safeguard measures with additional duty of 35 % on the product concerned originating in the Russian Federation.
- (14) Despite of that, the authorities of EU10 Member States considered that special transitional arrangements should apply to imports of the product concerned from Ukraine and Russia following the Enlargement. In this regard, it was argued that the product concerned is of significant importance for agricultural users in the EU10 since it cannot be easily substituted by another product.

- (15) It was further considered that a sharp and sudden increase in ammonium nitrate prices for farmers in the EU10 should be prevented; as they would, otherwise, face additional hardship in adjusting to the new competition of agricultural producers in the EU15. The importance of this issue was further underlined by the significant value of the exports (around 59 million Euros per annum) from Ukraine and Russia to the EU10 compared to exports to the EU15 of around 39 million Euros per annum from these countries.
- (16) It was therefore argued that import supply into the EU10 of the product concerned at prices which do not suddenly and sharply increase is of significant importance to these end users in the EU10.
- (17) Accordingly, these authorities took the view that imports of the product concerned originating in Ukraine and Russia into the EU10 should receive special treatment with regard to the anti-dumping measures.

4. Assessment

- (18) On the basis of the available data and information, an analysis was made which confirmed that a marked difference did exist between the prevailing prices for the product concerned in the EU10 and the EU15 (e.g. in EU10 in 2000-2003 average price was € 70 per tonne from Russia and €84 per tonne from Ukraine, whilst in EU15 in 2000-2003 was €100 per tonne from Russia and €108 per tonne from Ukraine).
- (19) The analysis also showed the import volumes coming into the EU10 from Ukraine and Russia were significant (in 2000-2003 on average around 817 thousands tonnes).

5. Conclusion

- (20) All these various aspects and interests have been taken into account and considered as a whole. It emerges from this that the EU10 importers' and users' interests would be substantially negatively affected by the sudden application of the existing measures if they were not to be temporarily adapted.
- (21) However, by contrast, as the interest of the Community Industry itself confirmed it, its interests would not be unduly negatively affected if the measures were to be temporarily adapted as they cannot currently fully satisfy the demands of customers in the EU10.
- (22) In such circumstances, it can reasonably be concluded in view of the specific situation of Enlargement, that it is not in the Community interest to apply the existing measures without temporary adaptation. However, such adaptation with regard to imports of the product concerned into the EU10 should not be such as to significantly undermine the desired level of trade defense.

- (23) To this end, different ways were examined on how to best protect the Community Industry from injurious dumping whilst, at the same time, take into account the Community interest aspects by lessening the economic shock of the anti-dumping duties to traditional buyers in the new Member States during the period of economic adjustment following Enlargement.
- (24) Due to the existence of the protective measures in some EU-10 countries prior Enlargement, it was considered that this could be best achieved by allowing the 50 % of traditional export volumes, i.e. export volumes not affected by the protective pre Enlargement measures in EU10, from Ukraine and Russia to the EU10 be imported free of anti-dumping duties for a transitional period, provided that, *in lieu* of levying anti-dumping duties, export prices to these Member States would be increased to levels which significantly contribute to the removal of injury. In this context, any exports to the EU10 above these traditional export volumes would be subject to the anti-dumping duties, as would exports to the EU15.

6. Undertakings

- (25) Having assessed the different options on how best to allow these traditional export flows to the EU10 to continue, *and* ensure the significant contribution to the removal of injury, it was considered that the most appropriate means was through the acceptance of voluntary undertakings from the cooperating parties with elements for minimum import prices and quantitative ceilings. Therefore, in accordance with Article 8 (2) of the basic Regulation, undertakings were suggested by the Commission to the exporting producers concerned.
- (26) In this context, it should be noted that, in accordance with Article 22 (c) of the basic Regulation, the special circumstances of Enlargement were taken into account when the terms of the undertakings were established. They constitute a special measure in that they provide a temporary way of adapting existing measures for the enlarged Community of twenty five Member States.
- (27) It should also be noted that the undertakings are not directly equivalent to an anti-dumping duty since the minimum import prices established are at lower levels than would usually be the case. To do otherwise would, as mentioned above, render the price of the product concerned prohibitively expensive to end users in the EU10 and, therefore, not be in the Community interest. Nevertheless, the exporting producers undertook to raise their prices to levels which significantly contribute to the elimination of injury.
- (28) Import volumes (“ceilings”) were therefore established for the exporting producers Ukraine and Russia, using as a basis 50 % of their traditional export volumes to the EU10 in 2001 and 2002. It should be noted, however, that abnormal increases in export volumes to the EU10 observed in the last few months of 2003 and the first months of 2004 were deducted from the traditional volumes used for determining the ceilings.

- (29) When selling to the EU10 under the terms of their undertakings, the exporting producers concerned should agree to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers should therefore be aware that any undertaking offer can only be considered as practicable, and therefore acceptable if, for sales covered by the undertakings, they would broadly maintain such traditional patterns of trade with their customers in the EU10.
- (30) The exporting producers should also be aware that, under the terms of the undertakings, if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place at the level specified in Regulation (EC) No 658/2002 and Regulation (EC) No 132/2001 or it may adjust the level of the ceiling, or it may take other remedial action.
- (31) Accordingly, any undertaking offers respecting the above conditions may be accepted by the Commission by Commission Regulation.

D. AMENDMENT OF REGULATION (EC) NO 658/2002 AND REGULATION (EC) NO 132/2001

- (32) In view of the above, it is necessary to provide, in the event of undertakings being accepted by the Commission in a subsequent Commission Regulation, for the possibility to exempt imports to the Community made under the terms of such undertakings from the anti-dumping duty imposed by Regulation (EC) No 658/2002 and Regulation (EC) No 132/2001 by amending these Regulations.

HAS ADOPTED THIS REGULATION:

Article 1

1. Article 2 of Regulation (EC) No 658/2002 is hereby replaced by the following:

'Article 2

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.

2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:
 - (a) the goods declared and presented to customs correspond precisely to the product described in Article 1,
 - (b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and
 - (c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.'
2. Article 2 of Regulation (EC) No 658/2002 is hereby renumbered Article 3.

Article 2

1. Article 2 of Regulation (EC) No 132/2001 is hereby replaced by the following:

'Article 2

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.
2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:
 - (a) the goods declared and presented to customs correspond precisely to the product described in Article 1,
 - (b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and
 - (c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.'
2. Article 2 of Regulation (EC) No 132/2001 is hereby renumbered Article 3.
3. Article 3 of Regulation (EC) No 132/2001 is hereby renumbered Article 4.

Article 3

This Regulation shall enter into force the day after 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, [...]

*For the Council
The President*

ANNEX

The following elements shall be indicated on the commercial invoice accompanying the company's sales of ammonium nitrate to the Community which are subject to the Undertaking:

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".
2. The name of the company mentioned in Article 1 of Commission Regulation [INSERT NUMBER] issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
 - Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN I, PCN 2 etc),
 - plain language description of the goods corresponding to the PCN concerned (e.g. PCN 1: ammonium nitrate not containing any additional elements – Standard product; PCN 2: ammonium nitrate containing additional elements in special mixtures, etc),
 - company product code number (CPC) (if applicable),
 - CN code,
 - quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.

9. The name of the official of the company that has issued the invoice and the following signed declaration:

“I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation [INSERT NUMBER]. I declare that the information provided in this invoice is complete and correct.”