Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1688

of 8 October 2019

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 13 August 2018, the European Commission initiated an anti-dumping investigation with regard to imports into the Union of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America ('the countries concerned') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). The Notice of Initiation ('NoI') was published in the *Official Journal of the European Union*[(2)].

(2) The Commission initiated the investigation following a complaint lodged on 29 June 2018 by Fertilizers Europe ('the complainant') on behalf of producers representing more than 50 % of the total Union production of mixtures of urea and ammonium nitrate ('UAN'). The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

(3) During the pre-disclosure period, and pursuant to Article 14(5a) of the basic Regulation, the Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2019/455[(3)]. The registration of imports ceased with the entry into force of the provisional measures referred to in the next recital.

1.3. Provisional measures

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(4) On 12 April 2019, the Commission imposed a provisional anti-dumping duty on imports into the Union of UAN originating in Russia, Trinidad and Tobago ('TT'), and the United States of America ('US') by Commission Implementing Regulation (EU) 2019/576[(4)] ('the provisional Regulation').

(5) As stated in recital (26) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2017 to 30 June 2018 ('the investigation period' or 'IP') and the examination of trends relevant for the assessment of injury covered the period from 1 January 2015 to the end of the investigation period ('the period considered').

1.4. **Subsequent procedure**

(6) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainants, the Union producer OCI Nitrogen B.V. ('OCI Nitrogen'), several associations representing the interests of users and other economic operators, the four cooperating exporting producers and the Government of the Russian Federation ('GOR') made written submissions making their views known on the provisional findings.

(7) The parties who so requested were granted an opportunity to be heard. Hearings took place with the complainant accompanied by the sampled Union producers AB Achema and Grupa Azoty Zaklady Azotowe Pulawy SA, the sampled Union producer OCI Nitrogen, several associations representing the interests of users and other economic operators and some of their members, and the four cooperating exporting producers. Additionally, further to the request of one of the Russian exporting producers Eurochem, a hearing with the Hearing Officer in trade proceedings was held. The recommendations of the Hearing Officer made during that hearing are reflected in this Regulation. On 27 May 2019, the Commission sent to the Russian exporting producers an additional disclosure containing their respective undercutting and underselling calculations.

(8) The Commission continued seeking and verifying all information it deemed necessary for its final findings. In case of some exporting producers, where certain claims for adjustments to the calculations of the dumping margin were accepted or additional company specific clarifications were needed, additional individual disclosures were provided in writing to the parties concerned. The Commission considered the comments submitted by interested parties and addressed them, where appropriate, in the company specific disclosures.

(9) Article 2(1) of the provisional Regulation stipulated that written comments on the provisional Regulation had to be submitted within 15 calendar days of the entry into force of that Regulation. On 24 June 2019, Eurochem sent additional written comments with regard to the following points: (i) the calculation of the selling, general and administrative ('SGA') costs of one of the producers companies, (ii) the legal basis and calculations of the gas adjustment, (iii) the application of Article 7(2a) of the basic Regulation and (iv) the additional disclosure referred to in recital (7). On 21 June 2019

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and 28 June 2019 Acron sent additional written comments with regard to the additional disclosure of 27 May 2019 and the accuracy of calculations of the provisional anti-dumping margin. The comments contained in those submissions were only analysed for the definitive disclosure insofar as they related to the additional disclosure provided to the companies on 27 May 2019 in line with Point 7, second indent of the Notice initiating the current investigation. On 8 July 2019, the Government of the United States of America submitted written comments on the provisional disclosure. Together with the definitive disclosure, the Commission invited all interested parties to re-submit any of the comments made outside the time-periods provided by the provisional regulation, the Notice of initiation or any further exchange with the Commission on this matter, if interested parties deem it appropriate pursuant to the final disclosure. The Commission looked into all the submissions made by interested parties timely submitted as comments on the definitive disclosure, including comments that followed the additional definitive disclosure to the Russian exporting producers on 6 August 2019.

(10) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. Comments were received from all cooperating exporting producers, Fertilizers Europe, Grupa Azoty Zaklady Azotowe Pulawy S. A. ('Grupa Azoty'), the users associations AGPB together with IFA, the Government of the United States of America and the GOR. Eurochem, Acron, and the GOR were afforded a hearing with the Commission services and in addition Eurochem and MHTL requested the intervention of the Hearing Officer in trade proceedings. On 23 July 2019, both parties had a hearing in the presence of the Hearing Officer.

(11) The comments submitted by the interested parties, including the late submissions to the provisional disclosure as set out in recital (9), were considered and taken into account where appropriate in this regulation.

1.5. **Sampling**

(12) Following provisional disclosure, several parties made comments linked to the sample of Union producers. These comments did not result in a change of the sample. Given the nature of these comments, they are dealt with in sections 4 and 5 below.

(13) In the absence of other comments concerning sampling, recitals (9) to (19) of the provisional Regulation were confirmed.

1.6. **Investigation period and period considered**

(14) In the absence of comments concerning the investigation period and period considered, recital (26) of the provisional Regulation was confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

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2.1. **Claims regarding the product scope**

(15) Following the request made by the Union producers Grupa Azoty and Agropolychim, the Commission clarified that the claim referred to in recital (33) of the provisional Regulation was made by both of them. The Commission also confirmed that the product scope of the investigation includes mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution that may have additives, currently falling under CN code 3102 80 00.

(16) After final disclosure, Fertilizers Europe, Grupa Azoty and Agropolychim expressed to be concerned that by mentioning CN code 3102 80 00, the Commission might inadvertedly cause imports of the product concerned to be imported under CN codes 3102 90 and 3105 51 in order to avoid the duties. The Commission notes that the product definition, as provided by the complainants, mirrors exactly the description of goods of CN code 3102 80 00, and that therefore imports of the product concerned can only be classified under that CN for customs purposes. Declaration under any other CN code would constitute fraud.

2.2. **Conclusion**

(17) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (27) to (34) of the provisional Regulation, as clarified in recital (15) above.

3. **DUMPING**

3.1. **Russia**

3.1.1. *Exporting producers*

(18) In the absence of comments concerning the description of the Russian exporting producers and their distribution channels, the Commission confirmed its conclusions set out in recitals (35) to (37) of the provisional Regulation.

3.1.2. *Normal value*

(19) The details for the calculation of the normal value were set out in recitals (38) to (61) of the provisional Regulation.

(20) Comments with regard to normal value calculation were received from the GOR and both Russian exporting producers. For better clarity claims regarding the methodology of normal value calculation as set out in recitals (38) to (41), (43) to (48) and (50) to (51) of the provisional Regulation and the issue of natural gas cost adjustment as set out in the recitals (52) to (60) of the provisional Regulation are treated separately.

(21) With regard to the methodology of the normal value calculation, both Russian producers claimed additional adjustments for the sales channelled through domestic related traders in the construction of the domestic ex-works price. Eurochem reiterated its claim that the SGA costs of the domestic trader should have been deducted. It

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additionally claimed after provisional disclosure that also the profit of domestic trader should have been deducted. Acron claimed a deduction of transport and handling costs for the channel of distribution where the goods are physically moved to the warehouse of the related domestic trader.

(22) For the purpose of the ex-works domestic price calculation, and in line with Article 2(1) of the basic Regulation, the Commission considered domestic producers and domestic traders as single economic entities. Therefore, the price is not adjusted for SGA costs and profit of the trader. It is also not adjusted for the expenses which took place between the production site and the warehouse of the company, even if it is a warehouse of a related trader – as it is a company decision whether goods are shipped directly to the clients or first to the warehouse of the related trader. Therefore, the claims for the above adjustments to the domestic prices were rejected.

(23) Following the definitive disclosure, Acron reiterated its claim with regard to the deduction of transport and handling costs related with the movement of goods between the production site and the warehouse of the related domestic trader. The company added an additional claim on the deduction of SGA and profit of the related domestic trader. However, no new evidence or arguments were provided which would change the Commission's conclusion of recital (22) for single economic entities on the domestic market.

(24) Nevertheless, with regard to the expenses related to the movement of goods between the production site and the warehouse of the related domestic trader, Acron additionally pointed out that, since these expenses were not deducted from the domestic price, they should have also not been deducted from the SGA used for the calculation of the normal value.

(25) This claim of the company was accepted. The Commission recalculated the normal value for Acron, increasing the SGA costs of the company as requested. However, despite the increase of SGA costs, all the domestic transactions of Acron remained profitable and therefore the dumping margin did not change. The correction of the calculation in question was disclosed to Acron as a part of the additional definitive disclosure.

(26) Additionally, both Russian exporting producers claimed that the comparison of the normal value and the export price was not made at the same level of trade since the domestic related traders are treated as single economic entities, thus their SGA and profit are not deducted from the domestic price, while related traders in third countries or in the EU are not treated as the single economic entities and thus the price adjustments in question are made.

(27) This claim is rejected. The Commission first notes that the claim does not relate to a level of trade adjustment. Rather, both companies are challenging the determination of normal value and export price. The Commission notes that, to reflect properly the price paid or payable in the home market for establishing the normal value, the SG&A costs and profits of related domestic traders are not deducted. In the same vein, to establish a reliable export price at Union frontier level where there are