Commission Implementing Regulation (EU) 2018/1722 of 14 November 2018 amending Implementing Regulation (EU) No 999/2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1722

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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)] ('the basic Regulation'), and in particular Article 11(3) thereof,

Whereas:

1. PROCEDURE

1.1. **Previous investigations and measures in force**

(1) By Council Regulation (EC) No 2022/95[(2)], the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Pursuant to a further investigation, which established that the duty was being absorbed, the measures were amended by Council Regulation (EC) No 663/98[(3)]. Following a first expiry review and a first interim review pursuant to Articles 11(2) and 11(3) of Regulation (EC) No 384/96[(4)] the Council, by Council Regulation (EC) No 658/2002[(5)], imposed a definitive anti-dumping duty of EUR 47,07 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. That investigation is referred to as 'he 2002 review'.

(2) Subsequently, a product scope interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 was carried out and, by Council Regulation (EC) No 945/2005[(6)], a definitive anti-dumping duty ranging between EUR 41,42 per tonne and EUR 47,07 per tonne was imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 20 and originating in Russia.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1722. (See end of Document for details)*

(3) Following a second expiry review and a second partial interim review pursuant to Articles 11(2) and 11(3) of Regulation (EC) No 384/96, the Council, by Council Regulation (EC) No 661/2008[(7)], maintained the measures in force. The duty was left unchanged, except for the EuroChem group, for which the fixed amount of duty ranged between EUR 28,88 and EUR 32,82 per tonne. That investigation is referred to as 'the 2008 review'.

(4) The European Commission ('the Commission'), by Decision 2008/577/EC[(8)], accepted the undertakings' offers with a quantitative ceiling from the Russian producers JSC Acron and JSC Dorogobuzh, members of the Acron Holding Company and from EuroChem group.

(5) By judgment of 10 September 2008[(9)], interpreted by judgment of 9 July 2009[(10)], the General Court annulled Regulation (EC) No 945/2005 in so far as it concerned JSC Kirovo-Chepetsky Khimichesky Kombinat ('Kirovo'), part of OJSC UCC UralChem ('Uralchem'). The Council, by Council Regulation (EC) No 989/2009[(11)], amended Regulation (EC) No 661/2008 accordingly. Consequently, for the company Kirovo the anti-dumping duty (EUR 47,07 per tonne) applies only to imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90.

(6) By Decision 2012/629/EU[(12)], the Commission withdrew its acceptance of the undertaking offered by the EuroChem Group because of the impracticability of the undertaking.

(7) Following a third expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009[(13)], the Commission, by Commission Implementing Regulation (EU) No 999/2014[(14)], maintained the measures in force. That investigation is referred to as 'the last expiry review'.

(8) Commission Implementing Regulation (EU) 2016/226[(15)] amending Implementing Regulation (EU) No 999/2014 addressed the restructuring of Kirovo as a branch of Uralchem.

(9) The Commission, by Commission Implementing Regulation (EU) 2016/415[(16)], withdrew the acceptance of the undertaking for the Acron Holding Company due to the impracticability of the undertaking.

(10) The measures currently in force take form of a fixed duty per tonne and are based on the injury margin, except for EuroChem. The level was set for EuroChem in the 2008 review based on the dumping margin.

1.2. **Request for a partial interim review**

(11) The Commission received a request for a partial interim review ('review request') pursuant to Article 11(3) of the basic Regulation from the following eight European farmers associations (the 'Applicant'): Association Générale des Producteurs de Blé et autres céréales ('AGPB', France), Confederazione Italiana Agricoltori ('CIA', Italy), Confagricoltura (Italy), Coop de France (France), Irish Farmers' Association

('IFA', Ireland), Office of Finnish Agriculture ('MTK', Finland), National Farmers' Union ('NFU', UK), and Unión de Pequeños Agricultores y Ganaderos ('UPA', Spain). The request was limited in scope to the examination of injury. The Applicant argued that Union farmers, as users of ammonium nitrate, are suffering from the anti-dumping measures that have been in place for more than 20 years, and that the injury situation of the Union industry should be reviewed due to lasting changes.

(12) Separately, the Applicant also called on the Commission to immediately suspend the measures pursuant to Article 14(4) of the basic Regulation.

1.3. **Initiation of a partial interim review**

(13) Having determined, after informing the Member States, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 17 August 2017, by a notice published in the *Official Journal of the European Union*[17] ('Notice of Initiation'), the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of injury.

(14) On the same day, the Commission announced, by way of a Notice of Initiation[18], the initiation of another partial review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia, limited to the examination of dumping pursuant to Article 11(3) of the basic Regulation.

1.4. **Investigation**

1.4.1. *Review investigation period and period considered*

(15) The review investigation period ('RIP') covered the period from 1 July 2016 to 30 June 2017. The examination of trends relevant for the assessment covered the period from 1 January 2014 to the end of the RIP ('the period considered').

1.4.2. *Interested parties*

(16) In the Notice of Initiation, the Commission invited interested parties to participate in the investigation. In addition, the Commission specifically informed the Applicant, the Union industry (producers and their associations), exporting producers and their association, the authorities of the exporting country and known possible unrelated importers about the initiation of the partial interim review investigation and invited them to participate.

(17) Interested parties were given the opportunity to make their views known in writing and to be heard.

(18) Hearings with the Commission services were organized for the Applicant, the Union producers association Fertilizers Europe, one individual Union producer, and one individual Russian producer.

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(19) In addition, during the investigation various interested parties made written submissions, including the Applicant, Fertilizers Europe, the Union farmers' association COPA-COGECA[19] and Russian association of fertilizers producers ('RFPA').

(20) The Applicant submitted on 25 April 2018 that the Commission should disregard some elements provided by Fertilizers Europe due to the timing of their submissions. Since the investigation was ongoing and the Commission had not set a strict deadline for final submission from all parties, this claim was rejected.

1.4.3. *Sampling*

(21) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.4.3.1. *Sample of Union producers*

(22) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked Union producers to provide the information specified in the Notice of Initiation. The sampling form was sent to 38 entities, including the 11 known associations of Union producers. The Commission received sampling information from 12 Union companies or groups.

(23) The Commission provisionally selected the sample on the basis of production in the Union and sales volumes on the Union market of the like product during the RIP, and of the sample selected in the last expiry review. The provisional sample consisted of four Union producers located in France, Lithuania, Poland and the United Kingdom[20].

(24) However, following comments from interested parties the Commission found it appropriate to replace the Polish company with a company from Bulgaria[21] and add one company from the Netherlands[22].

(25) The finally selected sample was thus comprised of five companies from five countries and represented around 40 % of the total production of the cooperating companies. Therefore, the sample is representative of the Union industry.

1.4.3.2. *Sample of Russian exporting producers*

(26) While this partial interim review does not cover dumping aspects, the Commission considered it appropriate to gather information from Russian exporting producers, such as about their production, capacity, Union sales and sales to third countries, to inform the injury assessment.

(27) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in Russia to provide the information specified in the Notice of Initiation. In addition, it informed the Permanent Mission of Russia to the Union and the Russian association RFPA.

(28) Six Russian producers provided the requested information. As only two producers exported to the Union, no sampling was necessary. The two Russian companies correspond to 38 % of the production of the cooperating Russian companies.

(29) The Russian exporting group Acron, which requested the initiation of a parallel interim review limited to dumping[23], did not fill in the sampling form. The company nonetheless provided limited information in the course of the investigation in the form of a partial reply to the questionnaire. Part of the data submitted was not the accurate information as updated following verification in the parallel investigation and could not be used.

1.4.3.3. *Sample of unrelated importers*

(30) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. However, no unrelated importer replied.

1.4.4. *Replies to questionnaires*

(31) The Commission sent questionnaires to the five sampled Union producers and the two Russian exporting producers, and received replies from all.

(32) It also gathered information from farmers' associations by sending a questionnaire to the Applicant in this investigation and other farmers' associations that had made themselves known as interested parties[24]. The Commission received replies from the Irish Farmers' Association, the UK farmers' association NFU, and a consolidated reply from the Applicant on behalf of associations active in 15 Member States[25]. The Lithuanian farmers' association later clarified that it did not take a view on the ongoing investigation.

1.4.5. *Verification visits*

(33) The Commission sought and verified all the information deemed necessary for the investigation. Verification visits under Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) Union producers
- AB Achema;
- CF Fertilisers UK Limited;
- Neochim PLC.;
- Yara France;
- Yara Sluiskil B.V.

(b) Cooperating exporting producers in Russia
- PJSC KuibyshevAzot;
- Uralchem JSC, as well as related importer Uralchem Trading SIA in Latvia.

1.4.6. *Disclosure*

(34) On 31 August 2018, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to propose to amend