Commission Implementing Regulation (EU) 2016/226 of 17 February 2016 amending Implementing Regulation (EU) No 999/2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

COMMISSION IMPLEMENTING REGULATION (EU) 2016/226

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THE EUROPEAN COMMISSION,

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

Having regard to 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'), and in particular Article 9(4) and 14(1),

Whereas:

(1) By Regulation (EC) No 2022/95[(2)], the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate 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 an expiry review and an interim review pursuant to Articles 11(2) and 11(3) respectively of Council Regulation (EC) No 384/96[(4)], the Council, by 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. 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 originating in Russia.

(2) Following a second expiry review and a second partial interim review pursuant to Article 11(2) and (3) of Regulation (EC) No 384/96, the anti-dumping measures described in the previous recital (as last amended by Regulation (EC) No 945/2005), were maintained by Council Regulation (EC) No 661/2008[(7)], except for the EuroChem group, for which the fixed amount of duty ranged between EUR 28,88 and EUR 32,82 per tonne.

(3) By Decision 2008/577/EC[8], the Commission accepted the undertaking offers with a quantitative ceiling from, among others, the Russian producers Open Joint Stock Company (JSC in Russian OAO) Acron and JSC Dorogobuzh.

(4) By judgment of 10 September 2008[9], as interpreted by judgment of 9 July 2009[10], the General Court annulled Regulation (EC) No 945/2005 in so far as it concerned Open Joint Stock Company (JSC) Kirovo-Chepetsky Khimichesky Kombinat (Kirovo), part of OJSC UCC Uralchem (Uralchem). The Council, by 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.

(5) By Implementing Regulation (EU) No 999/2014[12], the Commission maintained the anti-dumping measures (as last amended by Regulation (EC) No 989/2009), following an expiry review pursuant to Article 11(2) of the basic Regulation.

(6) On 16 September 2015 Kirovo notified the Commission of its planned reorganisation within the Uralchem Group of companies. As from 1 October 2015 Kirovo is effectively no longer a Joint Stock Company within OJSC UCC Uralchem (Uralchem), but it became a branch of Uralchem, called the Kirovo-Chepetsky Khimichesky Kombinat Branch of OJSC UCC Uralchem (Kirovo Branch). The company submitted that the aim of the reorganisation was to improve the corporate governance of the entire Uralchem Group.

(7) Uralchem has another production site, the Azot Branch of Uralchem, located in Berezniki (Russia), to which the anti-dumping duty (EUR 47,07 per tonne) applies to all types of ammonium nitrate specified in Article 1(1) of Implementing Regulation (EU) No 999/2014. Therefore, the risk of circumvention need to be assessed given the fact that there are now two branches (Berezniki and Kirovo) within the same legal entity producing ammonium nitrate.

(8) The Commission thus analysed the information provided by the company and all other information at its disposal and concluded that the risk of circumventing the anti-dumping measures by the different branches of Uralchem is low for the reasons set out below.

(9) First, since the change of the measures following Regulation (EC) No 989/2009 (when the anti-dumping duties applicable to Kirovo were limited only to imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90) there is no evidence that Uralchem has misused the exemption applicable to Kirovo. Indeed, the imports of ammonium nitrate currently not falling within CN codes 3102 30 90 and 3102 40 90 have remained stable since the amendment of the measures. Moreover, the Commission has no indications that the Berezniki plant had wrongly declared any of its production as having been produced by Kirovo, thereby misusing the exemption granted to Kirovo.

(10) Second, Uralchem submitted that pursuant to the applicable national legislation in Russia, fertilisers are subject to compulsory registration and markings, including the actual legal name and the physical address of the production site. The manufacturer's

production site has to be also included in a number of other official documents. Finally, if ammonium nitrate is exported, the production site must be contained in a number of mandatory documents, such as customs export declaration, certificate of origin and waybills. Therefore, it is unlikely that that once the TARIC additional code A959 is attributed to Kirovo Branch of Uralchem, any other production site of the group would misuse it.

(11) Third, by a letter sent to the Commission, dated 13 October 2015, Uralchem committed to not engaging in any actions which may lead to misusing the TARIC additional code A959, namely by exporting to the Union, under that TARIC code, products not produced in the Kirovo branch based in Kirovo-Chepetsk, Kirov oblast.

(12) Fourth, the maximum capacity of the Berezniki and Kirovo plants is also known by the Commission and it takes several years in order to build new facilities and to increase the existing capacity. Therefore, any imminent increase of imports in the future, in particular above the maximum capacity of the Kirovo plant, may lead to an *ex officio* anti-circumvention investigation.

(13) Nevertheless, in order to further minimise the risks of circumvention, special measures are needed to ensure the application of the individual anti-dumping duties applicable to the different branches within Uralchem. Uralchem must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1, third paragraph of this Regulation. Imports not accompanied by that invoice shall be subject to the duty rate applicable to 'all other companies'.

(14) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to amend Regulation (EU) No 999/2014. Those parties were granted a period within which they could make comments on the disclosure. Uralchem and the Government of the Russian Federation provided comments. Their comments were taken into account.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2)(b) of Implementing Regulation (EU) No 999/2014 shall read as follows:

(b) For goods produced by "KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk" (TARIC additional code A959):

Product description	**CN code**	**TARIC Code**	**Fixed amount of duty (EUR per tonne)**
Ammonium nitrate other than in aqueous solutions	3102 30 90	—	47,07