Commission Implementing Regulation (EU) No 999/2014 of 23 September 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) No 999/2014

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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)] and in particular Articles 9(4) and 11(2) and (5) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By 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 1225/2009 (the basic Regulation) the Council, by Regulation (EC) No 658/2002[(4)], 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 the basic Regulation was carried out and, by Council Regulation (EC) No 945/2005[(5)], 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 the basic Regulation, the Council, by Regulation (EC) No 661/2008[(6)], maintained the measures in force. The duty was left unchanged, except for the EuroChem group[(7)], for which the fixed amount of duty ranged between EUR 28,88 and EUR 32,82 per tonne.

(3) 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 Acron Holding Company (referred to jointly as Acron), and from EuroChem group. By Decision 2012/629/EU[9], the Commission withdrew its acceptance of the undertaking offered by the EuroChem Group because of the impracticability of the undertaking.

(4) By judgment of 10 September 2008[10], interpreted by judgment of 9 July 2009[11], 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 Regulation (EC) No 989/2009[12], 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.

1.2. **Request for an expiry review**

(5) Following the publication of a notice of impending expiry[13] of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of those measures pursuant to Article 11(2) of the basic Regulation. The request was lodged on 28 March 2013 by a Union association of manufacturers of fertilisers, 'Fertilisers Europe' (the applicant) on behalf of Union producers representing more than 25 % of the total Union production of the product concerned.

(6) The request was based on the grounds that the expiry of the measures would likely result in continuation and recurrence of dumping and injury to the Union industry.

(7) Following disclosure, the Russian Fertilisers Producers Association (RFPA) claimed that the request for the review was only supported by a certain proportion of Union producers of fertiliser grade ammonium nitrate (FGAN) and that the Union producers of all grades of ammonium nitrate and of other ammonium nitrate fertilisers represent a volume three times bigger than the applicant. This claim is however unfounded since the applicant and the supporters of the request are producers of FGAN as well as of other products covered by this expiry review. Therefore, the request was not supported only by FGAN producers, but also by producers of other types of the product concerned and the quantitative threshold for initiating a review was met.

1.3. **Initiation of an expiry review**

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of an expiry review, the Commission announced, on 12 July 2013, by a notice published in the *Official Journal of the European Union*, (notice of initiation)[14] the initiation of an expiry review under Article 11(2) of the basic Regulation.

(9) RFPA submitted comments concerning the measures in force and challenged their legality prior to the initiation of the investigation. The same party also claimed that there were no grounds for the initiation of an expiry review based on the elements sent

before the initiation to the Commission on the likelihood of continuation or recurrence of dumping and injury should measures expire.

(10) The Commission services replied to that interested party that it examines in detail the views expressed by parties other than the applicants only after the initiation of the investigation.

(11) The same interested party also requested access to the expiry review request in its version lodged on 28 March 2013, as referred to in the notice of initiation as well as to the deficiency letter issued by the Commission services to the applicants concerning their request for an expiry review in order to be able to better exercise its rights of defence. The Commission services informed the interested party that the decision to initiate an investigation was only based on the consolidated version of the request integrating the reply to the deficiency letter. Early versions and drafts are of no relevance. Therefore, not providing access to the initial version and the letter would not be in breach of the party's rights of defence. The party asked the Hearing Officer for DG Trade to intervene on this alleged breach of rights of defence. The Hearing Officer upheld the position of the Commission services on 4 March 2014.

(12) The interested party also requested access to expiry review requests relating to two other different proceedings. The party claimed that these requests where rejected as unsubstantiated and that access to those documents would enable it to compare the circumstances of the two cases with the pending review, understand the Commission's analysis of the sufficiency of the request in each case and thus adequately exercise its rights of defence. The party received all clarifications from the Commission Services and the Hearing Officer upheld the position of the Commission services on 4 March 2014.

1.4. **Investigation**

1.4.1. *Review investigation period and period considered*

(13) The investigation of a continuation and recurrence of dumping covered the period from 1 July 2012 to 30 June 2013 (‘the review investigation period’ or ‘RIP’). The examination of the trends relevant for the assessment of the likelihood of a recurrence of injury covered the period from 1 January 2010 to 30 June 2013 (the period considered).

(14) Following disclosure, RFPA claimed that compared to the previous expiry review leading to Regulation (EC) No 661/2008 there had been an unjustified change in methodology since the period considered in that review was longer.

(15) The Commission considers that the circumstances alleged by RFPA do not qualify as a change in methodology for the purpose of Article 11(9) of the basic Regulation. In any event, the following should be noted. The Commission practice is that the period considered normally covers the RIP and the three preceding calendar years, unless the RIP itself covers a considerable part of the previous calendar year. In the latter situation, four calendar years may exceptionally be taken into account. This was the case in the previous expiry review. The claim is therefore dismissed.

1.4.2. *Parties concerned by the investigation*

(16) In the notice of initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicants, other known Union producers, the known exporting producers and the authorities of Russia (country concerned), known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(17) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer for Directorate-General for Trade.

1.4.3. *Sampling*

(18) In the notice of initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

(a) *Sampling of Union producers*

(19) In the notice of initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission 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. This sample consisted of four Union producers located in France, Lithuania, Poland and the United Kingdom[15], representing around 42 % of the Union production and 41 % of the Union sales. The Commission invited interested parties to comment on the provisional sample.

(20) An interested party claimed that the provisionally selected sample of Union producers should only include producers of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90 as originally provided by Regulation (EC) No 2022/95, and not also producers of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling within CN codes 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, as provided by Regulation (EC) No 945/2005.

(21) The reason for this claim was that the judgment of the Court of First Instance in case T-348/05, referred to in recital 4, annulled Regulation (EC) No 945/2005 which expanded the product scope compared to the initial investigation.

(22) This claim is unfounded. The judgment in question annulled Regulation (EC) No 945/2005 only in so far as it concerned one Russian exporting producer. For all the other Russian producers the applicable product scope remains the one specified in Regulation (EC) No 945/2005. In any event, all sampled Union producers produce ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90. The solid fertilisers listed under the other CN codes are produced by the Union industry and are simply the result of additional chemical or blending activities to create compound fertilisers, also referred to as ‘stabilised fertilisers’ or ‘mixtures’, under the conditions

that the nitrogen content exceeds 28 % by weight or the ammonium nitrate content exceeds 80 % by weight.

(23) Therefore, the sample is representative of the Union industry.

(b) *Sampling of importers*

(24) 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.

(25) No unrelated importer replied to the sampling form and no sampling was therefore necessary.

(c) *Sampling of exporting producers in Russia*

(26) 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, the Commission asked the Permanent Mission of Russia to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(27) Eight exporting producers in the country concerned provided the requested information and agreed to be included in the sample. During the RIP, imports into the Union were made mainly under the undertakings that had been accepted. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four exporting producers which could reasonably be investigated within the time available. These producers had the largest volume of total exports sales. They included the two companies that had export sales to the Union under the undertaking during the RIP. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made. The Commission thus decided to retain the proposed sample and all interested parties were accordingly informed of the finally selected sample.

(28) The Commission selected the following four companies for the sample:

— Acron,

— EuroChem,

— UralChem,

— OJSC SBU Azot (SBU Azot).

(29) The sample represented 88 % of the total export sales from Russia in volume (to the Union and to third countries) during the RIP, based on the replies to the sampling forms.

1.4.4. *Questionnaire replies and verification visits*