Commission Implementing Regulation (EU) 2020/2100 of 15 December 2020 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2100

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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)] ('basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Council Regulation (EC) No 2022/95[(2)] ('original investigation'), the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate falling at the time of the entry into force of the regulation under CN codes 3102 30 90 and 3102 40 90 and originating in Russia ('the country concerned'). 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)].

(2) 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 at the time of the entry into force of the regulation under CN codes 3102 30 90 and 3102 40 90 and originating in Russia.

(3) 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, falling at the time of the entry into force of the regulation under 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 91 and originating in Russia.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/2100. (See end of Document for details)*

(4) 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.

(5) 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.

(6) 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 at the time of the entry into force of the Regulation (EUR 47,07 per tonne) applied only to imports of ammonium nitrate falling under CN codes 3102 30 90 and 3102 40 90.

(7) 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.

(8) 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 hereafter referred to as 'the last expiry review'

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

(10) 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.

(11) Following a review pursuant to Article 11(3) of Implementing Regulation (EU) 2018/1722[(17)], the Commission amended the measures in force. That investigation is referred to as 'the last interim review'. On this basis, the fixed amount of duty currently in place range between EUR 28,78 and EUR 32,71 per tonne.

1.2. **Request for an expiry review**

(12) Following the publication of a notice of impending expiry[(18)] of the anti-dumping measures in force on the imports of ammonium nitrate originating in Russia, the Commission received a request for review pursuant to Article 11(2) of the basic Regulation.

(13) The request was lodged on 21 June 2019 by a European association of fertilizers manufacturers, Fertilizers Europe ('the applicant' or 'FE'), on behalf of Union producers representing more than 25 % of the Union production of ammonium nitrate.

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

1.3. **Initiation**

(15) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 23 September 2019, by notice published in the *Official Journal of the European Union*[19] ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

1.4. **Interested parties**

(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 applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned, and the Russian authorities of the initiation of the expiry review and invited them to participate.

(17) All interested parties had the opportunity to comment on the initiation of the review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.5. **Comments on initiation**

(18) Following initiation, the Russian Fertilisers Producers Association ('RFPA') submitted that the request failed to provide sufficient evidence that the expiry of the anti-dumping measures on Russian ammonium nitrate ('AN') would result in the likely continuation or recurrence of dumping or injury. More specifically, RFPA submitted that since the original review request filed on 21 June 2019 ('original review request') provided no evidence of domestic sales being made outside the ordinary course of trade, the calculation of the dumping margin based on the construction of the normal value was illegal. RFPA further argued that the review request of 21 June 2019 did not have any evidence of dumping based on the comparison of actual domestic prices with export prices and that the applicant added such evidence only to the revised version of the request based on a deficiency letter issued by the Commission.

(19) Furthermore, RFPA claimed that the applicant's cost calculations were based on an inflated cost of manufacturing. They also claimed that the calculations of a constructed normal value were manifestly erroneous, based on unreliable, internally inconsistent, outdated information, incomprehensible data and mere estimates of a consultant, and that the Commission failed to diligently review these calculations.

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(20) The Commission initiated the expiry review based on the review request as initially submitted on 21 June 2019 and further supplemented by additional information (collectively referred to as 'consolidated review request'). The consolidated review request, which constitutes the basis for the initiation of this expiry review, was placed in the open file and made available to interested parties for consultation. As stated in point 4.1 of the Notice, the Applicant provided in its review request evidence of a normal value based on actual domestic prices and equally constructed the normal value in case the domestic prices would not be considered as reliable and reflecting ordinary course of trade. Whether the original request was supplemented with estimated normal values on the basis of information available on actual domestic prices in the country concerned is irrelevant insofar as the Commission initiated the expiry review on the basis of the consolidated review request.

(21) Regarding unreliability of data used by the Applicant in its allegations, a review request must contain sufficient evidence necessary to support the initiation of the review. The quality of this evidence will necessarily be limited by the applicant's ability to have access to the relevant information, which in most cases is confidential. Potential inaccuracies in the applicant's request uncovered during the investigation however do not render the initiation of this expiry review unlawful and the Commission investigation in this case in fact confirmed that the initiation was warranted.

(22) Following the disclosure, RFPA[(20)] reiterated their argument that no expiry review request that would satisfy the requirements of Article 11(2) of the basic Regulation had been lodged within the legal deadline. According to RFPA, it is the original review request that constitutes the basis for the initiation of the expiry review and against which the sufficiency-of-evidence requirement has to be assessed. Acron and the Russian Government provided similar arguments after the final disclosure. RFPA further submitted that while the Union producers could have clarified the evidence provided in the original review request, entirely new evidence on the likelihood-of-dumping or injury submitted outside the legal limit (i.e. 3 months before the end of the five-year period) should be disregarded. In this context, RFPA also referred to the Decision of the European Ombudsman[(21)] concerning a previous expiry review as well as to the recommendation of the Hearing Officer to the Commission services to disclose the original review request in the current review.

(23) The Commission notes that no new argument was raised by RFPA. Thus, the Commission recalls its position set out in recital (20) that this expiry review was initiated on the basis of the consolidated review request. The Commission considers that the request in its version filed by the 3-month deadline contained sufficient evidence that, subject to the clarifications provided by the applicants following the deficiency process to supplement its initial request, warranted the initiation of the expiry review. This in line with the Ombudsman Decision that in relevant parts states:

> 16. *The Ombudsman agrees that the three-month period is established for the administrative convenience of the Commission, which needs to assess the information provided by the applicants prior to deciding whether it should*

open an expiry review procedure. Logically, the Commission's verifications during this process may involve requesting clarifications and even additional information from the applicants, thus leading to consolidated review requests.

17. *However, these clarifications and additional information will not replace, but supplement the content of the original Review Request. Consequently, the latter will necessarily be used by the Commission within the meaning of Article 6(7) of the Basic Regulation when it decides to open an expiry review investigation. In fact, the Commission seems to admit this when it states, in the opinion, that it was the Review Request together with the subsequent clarifications presented as a consolidated version that formed the basis of... [the] opening of the investigation..*

(24) Furthermore, after the definitive disclosure, RFPA and the Russian Government claimed that the fact that the consolidated review request constituted the basis for initiation was not supported by the record of the investigation.

(25) The consolidated review request was placed in the file for inspection by the interested parties at initiation stage. There is no ambiguity as to the fact that the expiry review was initiated on the basis of that request. This can be confirmed by the reading of section 4.1 of the Notice of Initiation, which clearly referred to evidence stemming from the consolidated review request.

(26) With reference to Article 5(3) basic Regulation, RFPA submitted that the Commission failed to examine the accuracy and adequacy of the evidence provided by the applicant. In that context, RFPA also noted that both, the original and consolidated review requests only alleged the existence of a likelihood of continuation of dumping, while the Commission did not make any findings as to the continuation of dumping.

(27) The Commission notes that the argument is based on a misunderstanding of the purpose of a request on the one hand and the purpose of a review investigation on the other hand. The purpose of a request is to justify the initiation of an expiry review investigation based on the evidence reasonably available to the applicant as regards continuation or recurrence of injurious dumping. As explained above, the request contained sufficient evidence to that effect. On the other hand, the purpose of the review investigation is to determine whether the expiry of the measures would be likely to lead to continuation or recurrence of dumping and injury based on the information collected from the various interested parties during the review investigation. It is perfectly factually possible and legally admissible that the evidence available to the applicant shows a likelihood of continuation of dumping while the investigation will establish, based on the information collected from and verified with interested parties, that dumping is in fact likely to recur. To this effect, point 5 in the Notice of Initiation states that '[h]aving determined (…) that sufficient evidence of a likelihood of dumping and injury exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 11(2) of the basic Regulation'. The Notice of Initiation further specifies that '[t]he expiry review will determine whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping