Council Implementing Regulation (EU) No 512/2010 of 14 June 2010 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 512/2010

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning 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)] repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(2)] (the 'basic Regulation'), and in particular Article 11(2) thereof,

Having regard to the proposal submitted by the European Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) On 22 January 2001, the Council imposed, by Regulation (EC) No 132/2001[(3)], a definitive anti-dumping duty ('the existing measures') of EUR 33,25 per tonne on imports of ammonium nitrate ('AN') falling within CN codes 3102 30 90 and 3102 40 90 and originating, inter alia, in Ukraine. The investigation that led to these measures will be referred to as 'the original investigation'.

(2) On 17 May 2004, following a partial interim review, by Regulation (EC) No 993/2004[(4)], the Council exempted from the anti-dumping duties imposed by Council Regulation (EC) No 132/2001 imports to the Union of AN produced by companies from which undertakings would be accepted by the Commission. By Commission Regulation (EC) No 1001/2004[(5)], as last amended by Commission Regulation (EC) No 1996/2004[(6)], undertakings were accepted for a period until 20 May 2005. The purpose of these undertakings was to take account of certain consequences of the enlargement of the European Union to 25 Member States.

(3) By Regulation (EC) No 945/2005[(7)], following an interim review limited in scope to the definition of the product concerned, the Council decided that the definition of the product concerned should be clarified and that the measures in force should apply

to the product concerned when incorporated into other fertilizers, in proportion to their content of ammonium nitrate, together with other marginal substances and nutrients.

(4) By Regulation (EC) No 442/2007[8], following an expiry review, the Council decided to prolong the existing measures, as clarified by Regulation (EC) No 945/2005, for a period of two years.

(5) By Regulation (EC) No 661/2008[9], following an expiry review, the Council imposed definitive anti-dumping measures on imports of AN originating in Russia.

(6) By Regulation (EC) No 662/2008[10], the Council amended Regulation (EC) No 442/2007 by accepting a price undertaking offered by one exporting producer.

2. Request for a review

(7) On 22 January 2009, a request for an expiry review pursuant to Article 11(2) of the basic Regulation was lodged following the publication of a notice of impending expiry on 17 October 2008[11]. This request was lodged by the European Fertilizer Manufacturers Association (EFMA) ('the applicant') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of AN.

(8) The applicant alleged and provided sufficient *prima facie* evidence that there is a likelihood of recurrence of dumping and injury to the Union industry with regard to imports of AN originating in Ukraine ('the country concerned').

(9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 23 April 2009, by a notice of initiation published in the *Official Journal of the European Union*[12], the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

3. Investigation

3.1. *Investigation period*

(10) The investigation of continuation or recurrence of dumping covered the period from 1 April 2008 to 31 March 2009 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 2005 to the end of the RIP ('period considered').

3.2. *Parties concerned by the investigation*

(11) The Commission officially advised the exporting producers, importers and users known to be concerned and their associations, the representatives of the exporting country, the applicant and the Union producers of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(12) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(13) In view of the large number of Union producers and of Union importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the investigation and to provide the Commission with the information requested in the notice of initiation.

(14) After examination of the information submitted, and given that twelve Union producers indicated their willingness to cooperate, it was decided that sampling was necessary with regard to Union producers. No importers came forward by providing the information requested in the notice of initiation.

(15) Twelve Union producers, accounting for around 80 % of the total Union production during the RIP, properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. On that basis, the Commission selected, in accordance with Article 17 of the basic Regulation, a representative sample based on the largest representative volume of production and sales of AN in the Union which can reasonably be investigated within the time available. Five Union producers, accounting for 57 % of the total production of the Union industry during the RIP, were selected in the sample.

(16) In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted on the sample chosen and raised no objection thereto.

(17) Questionnaires were sent to the five sampled Union producers and to all known exporting producers in the country concerned.

(18) Replies to the questionnaires were received from the five sampled Union producers and three exporting producers in the country concerned.

(19) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) Exporting producers in Ukraine:
- CJSC Severodonetsk Azot Association, Severodonetsk,
- JSC Concern Stirol, Gorlovka,
- OJSC Rivneazot, Rivne,

(b) Union producers:
- GrowHow UK Limited, UK,
- GPN, Paris, France,
- Zakłady Azotowe Puławy SA, Poland,

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 512/2010. (See end of Document for details)*

— Yara SA, Brussels, Belgium,

— Achema, Jonavos, Lithuania.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(20) The product concerned is solid fertilizers with an ammonium nitrate content exceeding 80 % by weight originating in Ukraine, 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 91. AN is a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid, and its nitrogen content exceeds 28 % by weight in prilled or granular form.

(21) It should be noted that the scope of the product concerned was clarified in Regulation (EC) No 945/2005.

2. Like product

(22) As established in the original investigation, this review investigation confirmed that AN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. The product concerned and the products manufactured and sold by the exporting producers on their domestic market and to third countries, as well as those manufactured and sold by the Union producers on the Union market, have thus been found to have the same basic physical and chemical characteristics and essentially the same uses and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. General

(23) Cooperation was obtained from three Ukrainian exporting producers. A fourth known exporting producer did not cooperate in the investigation.

(24) The comparison of the export volume of the three cooperating exporting producers with the total volume of exports to the Union from Ukraine showed that the three cooperating exporting producers accounted for more than 90 % of all Union imports from Ukraine during the RIP. The level of cooperation was therefore considered to be high.

(25) Total import volumes of the product concerned from Ukraine were low, representing a market share of 1,1 % in the RIP when compared to the Union market as a whole.

2. Dumping of imports during the RIP

2.1. *Normal value*

(26) It is recalled that in the previous expiry review, Ukraine was not yet considered a market economy country and therefore the normal value was based on data obtained from a cooperating producer in the USA, the analogue country.

(27) In the present review, normal value was based on data obtained and verified at the premises of the three cooperating exporting producers in Ukraine. The Commission examined whether their domestic sales could be considered as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. To this end, the cost of production of the product produced and sold on the domestic market by the cooperating exporting producers were examined.

(28) As regards gas costs, it was found that Ukraine was importing the majority of the gas consumed in the production of AN from Russia. All data available and verified during the investigation indicated that Ukraine imported natural gas from Russia at a price which was, during the RIP, around 40 % below the price of natural gas from Russia when exported to the Union. However, it was found that in the last quarter of the RIP the prices were similar.

(29) It was found that apart from one product type exported by one producer, domestic sales were made in the ordinary course of trade during the RIP. Normal value was therefore established either based on the price paid or payable on the domestic market in Ukraine by unrelated customers pursuant to Article 2(1) of the basic Regulation or based on constructed normal value for the product type not sold in the ordinary course of trade. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported type a reasonable amount of selling, general and administrative expenses (SG&A) and a reasonable margin of profit. These amounts for SG&A and profit were based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the producer concerned.

(30) It should be noted that the normal value was determined without an adjustment for the gas costs borne by the Ukrainian exporting producers in accordance with Article 2(5) of the basic Regulation. This was because, as shown in recitals 32 to 34, the use of the unadjusted domestic costs and prices of the Ukrainian exporting producers in spite of the apparently distorted gas prices already clearly shows that dumping took place during the RIP. As a consequence, and given the fact that the purpose of an expiry review is to determine whether dumping would be likely to continue or recur should measures be repealed in order to determine whether the currently applicable measures should be maintained or repealed, it was considered that it was not necessary to examine whether an adjustment under Article 2(5) of the Basic Regulation was justified in this case.

2.2. *Export price*

(31) In accordance with Article 2(8) of the basic Regulation, the export price was established by reference to the price actually paid or payable for the product concerned when sold for export to the Community. All sales of the three cooperating exporting producers were made directly to independent customers in the Union.