Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 661/2008

of 8 July 2008

imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Articles 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

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 originating in Russia falling within CN codes 3102 30 90 and 3102 40 90. Pursuant to a further investigation, which established that the duty was being absorbed, the measures were amended by Regulation (EC) No 663/98[(3)]. Following a request for an expiry and an interim review pursuant to Articles 11(2) and 11(3) of 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. Finally, a product scope interim review 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 originating in Russia with an ammonium nitrate content exceeding 80 % by weight ('AN'), 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.

(2) On 19 April 2007, the Council imposed, by Regulation (EC) No 442/2007[(6)] definitive anti-dumping measures on imports of AN originating in Ukraine.

2. Request for reviews

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 661/2008. (See end of Document for details)*

2.1. Partial interim review of the anti-dumping measures in force on imports of AN originating in Russia and produced by Open Joint Stock Company (OJSC) Mineral and Chemical Company 'EuroChem', member of the EuroChem group of companies

(3) On 30 August 2005, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation ('interim review'). The request, limited in scope to dumping, was lodged by Open Joint Stock Company (OJSC) Mineral and Chemical Company 'EuroChem' ('EuroChem'), an exporting producer of AN in Russia.

(4) EuroChem alleged and provided sufficient *prima facie* evidence that circumstances had changed and, in particular, that a comparison of normal value based on its own data with export prices of the product concerned when sold for export to the Community would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of measures at the existing level, which was based on the injury margin previously established, would no longer be necessary to offset dumping.

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the interim review, the Commission initiated this review on 30 November 2005[(7)].

2.2. Expiry review of the anti-dumping measures in force on imports of AN originating in Russia

(6) Following the publication of a notice of impending expiry[(8)], the Commission received a request on 17 January 2007 for an expiry review.

(7) The request was lodged by the European Fertiliser Manufacturers Association (EFMA, the applicant), on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of AN.

(8) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry. One party claimed that the Commission should have opened ex officio a parallel interim review concerning both dumping and injury in order to take into account changes in circumstances caused by the EU enlargement that took place in 2004 and 2007. The Commission, by several notices[(9)] that were published in the *Official Journal of the European Union*, has invited interested parties to request the initiation of interim reviews if they submit evidence that the measures would have been significantly different if they were based on information including the new Member States. No such requests and substantiated evidence have been submitted to the Commission. In this regard, it should be noted that enlargement per se, in the absence of such evidence, is not a sufficient basis for a review to be initiated. Therefore, this claim had to be rejected.

(9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the expiry review, the Commission initiated this review on 14 April 2007[10].

3. Parties concerned by the investigations

(10) The interim review investigation is limited in scope to the examination of dumping as far as EuroChem is concerned. The Commission officially advised the exporting producer, the representatives of the exporting country and the Community producers of the initiation of the partial interim review.

(11) With regard to the expiry review investigation, the Commission officially advised the exporting producers, the representatives of the exporting country, importers, Community producers, users and the applicant (EFMA) of the initiation of the expiry review.

3.1. Sampling of Community producers

(12) In view of the large number of Community producers (23) and of importers in the Community, it was considered appropriate in the expiry review, in conformity 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 Community producers and importers 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.

(13) After examination of the information submitted, and given that 14 Community producers indicated their willingness to cooperate, it was decided that sampling was necessary with regard to Community producers.

3.2. Sampling of Community importers

(14) Only one importer responded to the notice of initiation and initially expressed its willingness to cooperate. However, this importer eventually did not provide any of the requested information as it stopped importing ammonium nitrate from Russia in 2005.

4. Questionnaires and verification

(15) For the interim review a questionnaire was sent to EuroChem, which cooperated by replying to the questionnaire.

(16) For the expiry review questionnaires were sent to all known exporting producers in the countries concerned, related importers, the Community producers in the sample, users and the applicant.

(17) As for the expiry review replies to the questionnaire were received from:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 661/2008. (See end of Document for details)*

(18) Three Russian exporting producers/distributors. These companies were: EuroChem, Acron ('Acron'), and JSC Minudiobreniya ('Minudiobreniya').

(19) Four sampled Community producers:

— Grande Paroisse Société Anonyme (Paris, France),

— Terra Nitrogen Limited (Stockton-on-Tees, UK),

— Yara (Belgium, Germany, France, Italy, the Netherlands and the UK),

— Zakłady Azotowe Puławy (Poland).

(20) From the 55 addressed potential importers of ammonium nitrate into the Community, only three companies replied indicating they had no imports of the product concerned during the period considered.

(21) Written comments were received from the Committee of Professional Agricultural Organisations in the EU (COPA)/General Confederation of Agricultural Cooperatives in the EU (Cogeca), from the National Farmers' Union of England and Wales and from the Federation of Swedish farmers.

(22) In both investigations 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 respective notices of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(23) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) *Exporting producers in Russia*

EuroChem and its two related companies[11]:

— OJSC Azot ('NAK Azot'), Novomoskovsk, Russia, and

— OJSC Nevinnomyssky Azot ('Nevinka Azot'), Nevinnomyssk, Russia.

Acron and its three related companies:

— Open Joint Stock Company (OJSC) Dorogobuzh,

— JSC Kubanagranova,

— ZAO Rostagranova.

Minudiobreniya

(b) *Sampled Community producers*

— Grande Paroisse Société Anonyme (Paris, France),

— Terra Nitrogen Limited (Stockton-on-Tees, UK),

— Yara Société Anonyme (offices visited in Brussels, Belgium; in Paris, France and in Sluiskil, the Netherlands),

— Zakłady Azotowe Puławy (Poland).

(c) *Related importer*

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 661/2008. (See end of Document for details)*

EuroChem GmbH — Zug (Switzerland)

(d) *Unrelated importers in the Community*

No verification visits were carried out, because no importer of AN from the country concerned replied to the questionnaire.

5. Relevant periods covered by the review investigations

(24) The investigation period for the partial interim review pursuant to Article 11(3) of the basic Regulation concerning imports from EuroChem covered the period from 1 July 2004 to 30 June 2005 (‘interim review investigation period’‘IRIP’).

(25) The investigation period for the expiry review covered the period from 1 April 2006 to 31 March 2007 (‘expiry review investigation period’ or ‘ERIP’). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2003 up to the end of the ERIP (‘period considered’).

6. Disclosure and opportunity to comment

(26) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the anti-dumping measures imposed on the company EuroChem and to maintain a definitive anti-dumping duty on AN originating in Russia. They were also granted a period within which they could make representations subsequent to the disclosures. Their comments were considered and taken into account where appropriate.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(27) The product concerned by these reviews is the same as the product defined in Regulation (EC) No 945/2005, i.e. solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, 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 and originating in Russia.

2. Like product

(28) As in previous investigations, it was found that AN produced and sold on the domestic market in Russia and AN exported to the Community from Russia have the same basic physical and technical characteristics and uses. Therefore, they are like products for the purposes of the present investigations within the meaning of Article 1(4) of the basic Regulation.

(29) The ammonium nitrate produced by the Community industry is a like-product as regards physical and technical characteristics to the ammonium nitrate exported to the Community by Russia.

C. PARTIAL INTERIM REVIEW: DUMPING