Council Regulation (EC) No 238/2008 of 10 March 2008 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of solutions of urea and ammonium nitrate originating in Russia

COUNCIL REGULATION (EC) No 238/2008

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terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of solutions of urea and ammonium nitrate originating in Russia

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 Article 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 1995/2000[(2)], the Council imposed a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate (UAN) originating, *inter alia*, in Russia. This Regulation will hereinafter be referred to as 'the original Regulation' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

(2) Following an expiry review initiated in September 2005, the Council, by Regulation (EC) No 1911/2006[(3)], renewed for five years these measures at their current level. The measures consist of specific duties. This regulation will hereinafter be referred to as 'the expiry Regulation' and the investigation that led to the measures imposed by the expiry Regulation will be hereinafter referred to as 'the expiry review'.

2. Request for a review

(3) A request for a partial interim review (the present review) pursuant to Article 11(3) of the basic Regulation was lodged by two exporting producers from Russia, belonging to the Joint Stock Company 'Mineral and Chemical Company Eurochem', namely Novomoskovskiy Azot and Nevinnomyssky Azot. These two companies, due to their relationship, are treated as one legal entity (the applicant) for the purpose of

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the present review. The request was limited in scope to dumping as far as the applicant is concerned.

(4) The applicant alleged that the comparison of its own normal value and, in the absence of exports to the European Community, export prices to an appropriate third country, in this case, the United States of America (USA), would lead to a reduction of dumping significantly below the level of the current measures.

3. Investigation

(5) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence, the Commission announced on 19 December 2006 the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation by a notice of initiation published in the *Official Journal of the European Union*[4].

(6) The review was limited in scope to the examination of dumping in respect of the applicant. The investigation of dumping covered the period from 1 October 2005 to 30 September 2006 (the review investigation period or RIP).

(7) The Commission officially informed the applicant, the representatives of the exporting country and the association of Community producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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

(9) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to Joint Stock Company 'Mineral and Chemical Company Eurochem' and its related companies and received replies within the deadlines set for that purpose.

(10) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out verification visits at the premises of the applicant and its related companies:

— JSC Mineral and Chemical Company (Eurochem), Moscow, Russia,

— PJSC Azot (NAK Azot), Novomoskovsk, Russia,

— PJSC Nevinnomyssky Azot (Nevinka Azot), Nevinnomyssk, Russia, and

— Eurochem Trading GmbH, Zug, Switzerland — (Eurochem Trading).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(11) The product concerned is the same as in the original investigation, i.e. a solution of urea and ammonium nitrate, a liquid fertiliser commonly used in agriculture, originating in Russia (UAN). It consists of a mixture of urea, ammonium nitrate and water. The water content is approximately 70 % of the mixture (depending on the

nitrogen content), the remaining part consisting equally of urea and ammonium nitrate. The nitrogen (N) content is the most significant 'feature' of the product, and it can vary between 28 % and 32 %. Such variation can be obtained by adding more or less water to the solution. However, whatever their nitrogen content, all solutions of urea and ammonium nitrate are considered to have the same basic physical and chemical characteristics and therefore constitute a single product for the purpose of this investigation. The product concerned falls within CN code 3102 80 00.

2. Like product

(12) This review investigation confirmed that UAN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. The UAN solutions manufactured and sold by the applicant on its domestic market in Russia and, in the absence of exports to the European Community, those exported to the United States of America have the same basic physical and chemical characteristics and essentially the same uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to the determination of dumping as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

C. RESULTS OF THE INVESTIGATION

1. Preliminary remarks

(13) As announced in the notice of initiation, since the applicant did not have export sales of UAN to the European Community during the RIP, the current investigation examined first to what extent export prices to a third country should be used in deciding whether the basis on which existing measures were established has changed and whether these changes are of a lasting nature.

(14) The applicant supplied evidence that due to the duties in force, the product could not be sold for export to the Community market during the RIP. The applicant provided *prima facie* evidence that export prices to the USA, a representative third market, were not dumped or at least to a lesser extent than the dumping margin currently established for exports to the European Community and that it was appropriate to use export prices to the USA. For the reasons set out in recital 43 and following, export prices to the third country USA were found to be appropriate because the US market was comparable to the Community market and therefore representative.

(15) It should be noted that the measures currently applicable are partly based on data not linked to the applicant's own production and sales of the product concerned, while during the current RIP verified information related to the applicant's own data pertaining to the normal value and export prices, albeit to a third country market, was available. On this basis, it was concluded that the dumping margin found during the current RIP reflected more accurately the situation of the applicant during the RIP than the measures currently in force.

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(16) In this context, it was also considered that the objective of an anti-dumping duty is not to close the Community market from third country imports but to restore a fair level playing field.

(17) Given the above specific circumstances, it was therefore concluded that the calculation of the dumping margin during the RIP on the basis of export sales prices of the applicant to the USA was appropriate.

2. Normal value

(18) In order to establish the normal value, it was first verified that the total domestic sales of the applicant were representative in accordance with Article 2(2) of the basic Regulation. Since the applicant did not have export sales of UAN to the European Community during the RIP, overall domestic sales quantities of the applicant were compared to all exports of UAN by the applicant to the United States. In accordance with Article 2(2) of the basic Regulation, domestic sales should be considered representative in case the total volume of such sales is equal to or greater than 5 % of the total volume of the corresponding export sales, in this case to the United States. The investigation showed that the applicant did not sell representative quantities of UAN on the domestic market.

(19) Since on this basis the domestic prices of the applicant could not be used to establish normal value, normal value was constructed on the basis of the manufacturing costs incurred by the applicant plus a reasonable amount for selling, general and administrative costs (SG&A costs) and for profits, in accordance with Article 2(3) and (6) of the basic Regulation.

(20) Regarding the cost of manufacturing, it should be noted that gas costs represent a major proportion of the manufacturing cost and a significant proportion of the total cost of production. In accordance with Article 2(5) of the basic Regulation, it was examined whether the costs associated with the production and sales of the product concerned were reasonably reflected in the records of the applicant.

(21) It was established on the basis of data published by internationally recognised sources specialised in energy markets, that the prices paid by the applicant were abnormally low. By way of illustration, they amounted to one forth and one fifth of the export price of natural gas from Russia. In this regard, all available data indicates that domestic gas prices in Russia were regulated prices, which are far below market prices paid in unregulated markets for natural gas. Since gas costs were not reasonably reflected in the applicant's records, they had to be adjusted accordingly. In the absence of any undistorted gas prices relating to the Russian domestic market, and in accordance with Article 2(5) of the basic Regulation, gas prices had to be established on 'any other reasonable basis, including information from other representative markets'.

(22) The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs and adjusted to reflect local distribution costs. Waidhaus, being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably

reflecting costs, can be considered a representative market within the meaning of Article 2(5) of the basic Regulation.

(23) Following disclosure, the applicant claimed that any adjustment of its gas price paid on the domestic market would be unwarranted alleging that its accounting records fully reflected the costs associated with the activity of production and sales of the like product in the country of origin. To substantiate this claim, the applicant provided a study from an independent consultancy firm that the gas price paid by the applicant reflected full cost of production and sale of gas, as incurred by the gas provider. It should first be noted that, as the study itself sets out, the costs of gas as well as the cost of the delivery of the gas to the applicant used for the comparison were estimated costs and thus not actual costs incurred during the RIP. It is also unclear whether the costs thus established were full costs as established in accordance with the basic Regulation, i.e. including full costs of manufacturing and full SG&A costs linked to the production and sale of gas. Finally, it is also noted that the information available on the gas provider's costs could not be verified within the framework of this proceeding.

(24) In any case, it is considered that under Article 2(5) of the basic Regulation, the sole fact that the price of gas charged by the supplier to its client is cost covering is as such not a criterion to establish whether the costs of production of the like product as booked in the company's accounts are reasonably reflecting the costs associated with the production and sale of the product under investigation. For the reasons set out above in recital 21, this was found not to be the case. The applicant did not address the apparent significant difference between the price for gas paid on the Russian domestic market and the export price of natural gas from Russia on the one hand and the one paid by the Community producers on the other hand. It did also not address the fact that domestic prices for natural gas were regulated in Russia and could not be considered to reasonably reflect a price normally payable in undistorted markets. Therefore, even if the gas price paid by the applicant covered the unit cost of production and sales of the gas incurred by its provider, this argument is irrelevant since the market price of gas is not necessarily directly linked to costs of its production and sales. The price at which the applicant was purchasing the gas during the RIP continues to be State regulated and significantly below the price level in non-regulated markets as explained in recital 21. This claim therefore had to be rejected.

(25) The applicant further claimed that by making a gas adjustment, *de facto* a methodology to determine normal value was used which is not foreseen by the basic Regulation. Thus, by replacing domestic gas costs by costs calculated as described in recital 22, and due to the fact that these costs constitute major part of the total costs of the like product and therefore also of the constructed normal value, the normal value would be *de facto* determined by data from a third 'representative' market. In this regard, the applicant argued that for market economy countries, the basic Regulation however foresees, only the following methodologies to determine the normal value: (i) on the basis of the domestic price of the like product in the ordinary cause of trade, or alternatively, in case sales are not made in the ordinary course of trade, (ii) on the