Council Regulation (EC) No 907/2007 of 23 July 2007 repealing the anti-dumping duty on imports of urea originating in Russia, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96, and terminating the partial interim reviews pursuant to Article 11(3) of such imports originating in Russia

COUNCIL REGULATION (EC) No 907/2007

of 23 July 2007

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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(2) and (3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In March 1995, the Council, by Regulation (EC) No 477/95[(2)], imposed a definitive anti-dumping duty on imports of urea originating in the Russian Federation (Russia). The amount of the duty imposed was the difference between ECU 115 per tonne and the net, free-at-Community frontier price, before duty, if the latter price was lower. The investigation that led to these measures will be referred to as 'the original investigation'. Following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 901/2001[(3)], decided that these measures should be maintained. The measures currently in force are in the form of a variable duty on the basis of a minimum import price (MIP) of EUR 115 per tonne (the existing measures). The review investigation that led to the maintenance of the measures will be referred to as 'the previous expiry review investigation'.

(2) In December 2003, the Council, by Regulation (EC) No 2228/2003[(4)], terminated a partial interim review initiated on the initiative of the Commission pursuant to Article 11(3) of the basic Regulation in order to examine the appropriateness of the form of the measures in force, without any amendment to the existing measures.

2. Requests for reviews

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 907/2007. (See end of Document for details)*

(3) In August 2005[5], the Commission published a notice of impending expiry of the existing measures. On 9 February 2006 the Commission received a request for an expiry review of these measures pursuant to Article 11(2) of the basic Regulation and a request for a partial interim review limited to the form of the measures, pursuant to Article 11(3) of the basic Regulation.

(4) These requests were 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 urea.

(5) The applicant alleged and provided sufficient *prima facie* evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry with regard to imports of urea originating in Russia (the country concerned) and that the current form of the measures was not sufficient to counteract the injurious effects of dumping.

(6) Furthermore, on 14 September 2006, a request for a partial interim review of Regulation (EC) No 901/2001 was received from Joint Stock Company, Mineral and Chemical Company EuroChem, (EuroChem), an exporting producer of urea in Russia subject to the anti-dumping measures in force.

(7) In the request pursuant to Article 11(3) of the basic Regulation, EuroChem provided *prima facie* evidence to support its claims that, as far as it was concerned, the circumstances on the basis of which measures were established had changed and that these changes were of a lasting nature. EuroChem provided evidence showing that a comparison between its own costs and its export prices would lead to a reduction of dumping significantly below the level of the current measures. Therefore, EuroChem claimed that the continued imposition of measures at the existing levels, which were based on the level of injury margin previously established, was no longer necessary to offset dumping.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation and of two partial interim reviews pursuant to Article 11(3) of the basic Regulation, the Commission initiated these three reviews by publishing notices of initiation in the *Official Journal of the European Union*[6].

3. Investigation

3.1. Investigation period

(9) As regards the expiry review, the investigation of continuation or recurrence of dumping and injury covered the period from 1 April 2005 to 31 March 2006 (review investigation period or RIP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2002 up to the end of the RIP (period considered). The period used in the partial interim review for the investigation of the appropriateness of the form of the measures was the same as the period considered in the expiry review. The investigation period for the partial

interim review limited in scope to the examination of dumping concerning EuroChem was the period from 1 October 2005 to 30 September 2006.

3.2. Parties concerned by the investigation

(10) The Commission officially advised the exporting producers in Russia, importers and users known to be concerned and their associations, the representatives of the exporting country concerned, the applicant and known Community producers of the initiation of the two reviews. 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.

(11) The Commission officially advised EuroChem, the representatives of Russia, as well as the applicant of the initiation of the partial interim review limited in scope to the examination of dumping. 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) With regard to the expiry review and to the partial interim review limited to the form of the measures, in view of the apparent large number of Community producers, importers in the Community and exporting producers in Russia, 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) With regard to importers into the Community, only one importer provided the information requested in the notice of initiation and expressed its willingness to cooperate further with the Commission services. It was therefore decided that sampling was not necessary with regard to importers.

(15) Nine Community producers properly completed the sampling form and formally agreed to cooperate further in the investigation. Four out of these nine companies, which were found to be representative of the Community industry in terms of volume of production and sales of urea in the Community, were selected for the sample. The four sampled Community producers accounted for around 50 % of the total production of the Community industry, as defined in recital (63), during the RIP, whilst the above nine Community producers represented around 60 % of production in the Community. This sample constituted the largest representative volume of production and sales of urea in the Community which could reasonably be investigated within the time available.

(16) Five exporting producers properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. These five

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exporting producers accounted for 60 % of the total Russian exports to the Community during the RIP.

(17) A sample of three exporting producers which could reasonably be investigated within the time available was selected in accordance with Article 17 of the basic Regulation, based on the largest quantity of exports of urea made to the Community. The three sampled exporting producers accounted for 50 % of the total Russian exports to the Community during the RIP.

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

(19) As a result of additional information available, it was later established that one of the three sampled exporting producers actually was not amongst those having the largest quantity of exports to the Community. This exporting producer was therefore excluded from the sample and substituted with the fourth ranking exporting producer. The sample so modified accounted for 48 % of the total Russian exports to the Community during the RIP.

(20) Questionnaires were therefore sent to the four sampled Community producers, to the three sampled Russian exporting producers, as well as to all importers and users that had made themselves known.

(21) Replies to the questionnaire were received from the four sampled Community producers and three exporting producers in Russia, as well as from one unrelated importer and seven users in the Community. In addition, several importers and users and their associations submitted comments without replying to the questionnaire.

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

(a) *Sampled Community producers*

— Fertiberia S.A., Madrid, Spain,

— Nitrogénművek Zrt., Pétfűrdo, Hungary,

— SKW Stickstoffwerke Piesteritz GmbH, Lutherstadt Wittenberg, Germany,

— Yara S.A., Brussels, Belgium and its related producer Yara Sluiskil B.V., Sluiskil, The Netherlands;

(b) *Sampled exporting producers in Russia*

— JSC Mineral and Chemical Company (Eurochem), Moscow, Russia, and its two related manufacturing companies:

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

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

— JSC Minudobrenia, Perm, Russia,

— JSC Acron, Velikij Novgorod, Russia.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(23) The product concerned is the same as in the original investigation and in the previous expiry review investigation, i.e. urea falling within CN codes 3102 10 10 and 3102 10 90 and originating in Russia.

(24) Urea is produced mainly from ammonia, which in turn is produced from natural gas. It may take a solid or a liquid form. Solid urea can be used for agricultural and industrial purposes. Agricultural grade urea can be used either as a fertiliser, which is spread onto the soil, or as an animal feed additive. Industrial grade urea is a raw material for certain glues and plastics. Liquid urea can be used both as a fertiliser and for industrial purposes. Although urea is presented in the different forms mentioned above, its chemical properties remain basically the same and may be regarded for the purposes of the present proceeding as one product.

2. Like product

(25) As established in the original investigation and the previous expiry review investigation, the current review investigations confirmed that the product concerned and the urea produced and sold by the Community producers on the Community market, as well as the urea produced and sold on the Russian domestic market have the same basic chemical characteristics and essentially the same uses. They 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. Continuation of dumping during the review investigation period

(26) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was taking place during the RIP and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

1.1. General

(27) As mentioned in recital (16), five Russian exporting producers of urea cooperated in the investigation. These five producers represented 60 % of exports of urea originating in Russia to the Community during the RIP, which corresponded to 1,39 million tonnes. Imports into the Community of the product concerned originating in Russia represented 16 % of Community consumption, which was 8,98 million tonnes in the RIP.

(28) Therefore, the level of cooperation is considered high.

1.2. Normal value