Council Regulation (EC) No 1050/2006 of 11 July 2006 imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus and Russia

COUNCIL REGULATION (EC) No 1050/2006

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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 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) The Council, by Regulation (EEC) No 3068/92[(2)] (the original Regulation), imposed definitive anti-dumping duties on imports of potassium chloride (potash or the product concerned) originating, *inter alia*, in Belarus and Russia (the countries concerned).

(2) Following an expiry review pursuant to Article 11(2) and an interim review pursuant to Article 11(3) of the basic Regulation (the previous investigation) the Council, by Regulation No 969/2000[(3)], decided that the abovementioned measures should be maintained and amended the form of the measures. The measures were imposed in the form of a fixed amount in euro per tonne for the various categories and grades of potash.

(3) By Regulation (EC) No 992/2004[(4)], the Council provided for the exemption from the anti-dumping duties of imports into the new Member States that acceded to the European Union on 1 May 2004 (the EU-10) made under the terms of special undertaking offers (enlargement undertakings), and authorised the Commission to accept those enlargement undertakings. On this basis, the Commission, by Regulation (EC) No 1002/2004[(5)], accepted enlargement undertakings from (i) an exporting producer in Belarus jointly with companies situated in Austria, Lithuania and Russia, (ii) an exporting producer in Russia jointly with companies situated in Russia and Austria, and (iii) an exporting producer in Russia jointly with a company situated at the time of acceptance in Cyprus.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1050/2006. (See end of Document for details)*

(4) By Regulation (EC) No 858/2005[6], the Commission accepted new undertakings from the exporting producers mentioned above until 13 April 2006.

(5) Following two separate partial interim review investigations pursuant to Article 11(3) of the basic Regulation, requested by the Russian exporting producers JSC Silvinit and JSC Uralkali, the Council, by Regulation (EC) 1891/2005[7], amended Regulation (EEC) No 3068/92 replacing the fixed amounts of duties with individual *ad valorem* duties for all potash types manufactured by these Russian companies. By Commission Decision No 2005/802/EC[8], undertakings were accepted from the two applicant companies.

(6) Following the publication of a notice of impending expiry of the anti-dumping measures in force[9], the measures on imports originating in Ukraine expired on 12 May 2005 since no request for an expiry review was lodged.

2. Requests for review

2.1. Request for an expiry review

(7) Following the publication of the abovementioned notice of impending expiry, the Commission received a request to review these measures with regard to Russia and Belarus pursuant to Article 11(2) of the basic Regulation.

(8) The request was lodged on 10 February 2005 by the European Potash Producers Association (the applicant) on behalf of producers, whose collective output constitutes about 99 % of the Community production of potash, i.e. a major proportion of the total Community production.

(9) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry. Indeed, the applicant alleged that potash from the countries concerned is still being sold at dumped prices in the Community. The applicant also claimed that imports of the product concerned from Belarus and Russia have increased and the volumes and the prices of the imported product have continued to have a negative impact on the market share held, the quantities sold and the level of prices charged by the Community industry, resulting in substantial adverse effects on the overall performance and financial situation of the Community industry. Finally, the applicant alleged the likelihood of further injurious dumping and presented evidence that if measures were allowed to lapse the fragile situation of the Community industry would further deteriorate.

(10) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an investigation through the publication of a notice of initiation[10] pursuant to Article 11(2) of the basic Regulation.

2.2. Request for a partial interim review

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 1050/2006. (See end of Document for details)*

(11) A partial interim review limited to dumping was requested by the sole exporting producer in Belarus, Republican Unitary Enterprise Production Amalgamation Belaruskali (Belaruskali).

(12) Belaruskali provided evidence that, as far it is concerned, the circumstances on the basis of which measures were established have changed and that these changes are of a lasting nature.

(13) Belaruskali demonstrated that a comparison of normal value in an appropriate market economy third country and its export prices to the EU over an extended period would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of the measures at the existing level, which is based on the dumping previously established, would no longer be necessary to offset dumping.

(14) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of this partial interim review, the Commission initiated an investigation through the publication of a notice of initiation[(11)] pursuant to Article 11(3) of the basic Regulation.

3. The investigation

3.1. Period of investigation

(15) The investigation of the likelihood of a continuation or recurrence of dumping for the expiry review pursuant to Article 11(2) of the basic Regulation concerning Belarus and Russia covered the period from 1 January to 31 December 2004 (IP or the investigation period). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2001 up to the end of the IP (the period considered).

(16) The investigation period for the partial interim review pursuant to Article 11(3) of the basic Regulation concerning Belarus is the same as the one of the expiry review.

3.2. Parties concerned by the investigation

(17) The Commission officially advised the Community producers, the exporters and producers in the exporting countries and the importers/users as well as their representative associations known to be concerned and the representatives of the exporting countries of the initiation of the two reviews. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notices of initiation. In addition, the known producers in Canada, which was selected as the potential analogue country, were contacted and received questionnaires. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

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(18) The three Community producers replied to the questionnaire. Fourteen unrelated importers and/or users also supplied full questionnaire replies and made their views known in writing.

(19) Replies to the questionnaires were received from three exporting producers in the countries concerned, as well as from five importers in the Community and one exporting trader in Russia which were related to the exporting producers.

(20) One producer in the analogue country provided a complete questionnaire response and another producer in the analogue country provided detailed information concerning its cost of production of the like product.

3.3. Interested Parties and verification visits

(21) The Commission sought and verified all information deemed necessary to determine whether or not there is a likelihood of a continuation or recurrence of dumping and injury and whether the continued imposition of the measures is in the Community interest or not. The Commission also sought and verified all information deemed necessary to determine the level of dumping for the sole exporting producer in Belarus. Investigations were carried out at the premises of the following companies:

(a) Community producers
- — Cleveland Potash Limited, Saltburn, United Kingdom,
- — Iberpotash, S.A., Suria (Barcelona), Spain,
- — K+S Kali GmbH, Kassel, Germany;

(b) Exporting producers in Russia
- — JSC Silvinit (Silvinit), Solikamsk, Perm Region, Russia,
- — JSC Uralkali (Uralkali), Berezniki, Perm Region, Russia;

(c) Related exporter to JSC Silvinit and Belaruskali
- — International Potash Company (IPC), Moscow, Russia;

(d) Related importer of JSC Silvinit and Belaruskali
- — Belurs GmbH (Belurs), Vienna, Austria;

(e) Producers in the analogue country
- — Agrium, Inc. (Agrium), Calgary, Alberta, Canada,
- — PCS Potash Corp, Inc (PCS), Saskatoon, Saskatchewan, Canada;

(f) Unrelated importers in the Community
- — AUREPIO SP, Warsaw, Poland;

(g) Unrelated users in the Community
- — Zaklady Chemiczne ‘Police’ SA, Police, Poland,
- — Fosfan S.A., Szczecin, Poland,
- — Tessenderlo Chemie NV/SA, Brussels, Belgium,

— Yara SA, Brussels, Belgium.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. The product concerned

(22) The product concerned is the same as in the previous investigation, i.e. potassium chloride (potash). It is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphor, potash). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide (K_2O) on the dry anhydrous product.

(23) Potash is generally commercialised in either a standard/powder form (standard potash) or in an ''other than standard' form that includes but is not limited to a granular form (granular potash). The product is classified into three basic categories, based on the K_2O content, namely:

— potassium content not exceeding 40 % K_2O – falling under CN code 3104 20 10,

— potassium content exceeding 40 % K_2O but less than or equal to 62 % – falling under CN code 3104 20 50,

— potassium content over 62 % K_2O – falling under CN code 3104 20 90

and certain special mixtures or blends with a high content of potash, namely:

— potassium content equal to or exceeding 35 % K_2O but not exceeding 40 % – falling under CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91 and ex 3105 90 99,

— potassium content exceeding 40 % K_2O but not exceeding 62 % – falling under CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91 and ex 3105 90 99.

As in the previous investigations, it was established that the different types and qualities of potash all share the same basic physical and chemical characteristics and essentially the same basic use. Therefore, they are to be considered as one single product.

2. Like product

(24) The investigation confirmed that the product concerned and the potash produced and sold by the Community producers on the Community market, as well as the potash produced and sold on the domestic market of the countries concerned and that produced and sold by Canadian producers on the Canadian market have the same basic physical and chemical properties and the same uses. They are therefore considered to be a like product within the meaning of Article 1(4) of the basic Regulation.

(25) One exporter in Russia requested the exclusion of standard potash with a K_2O content higher than 62 %, which, it was claimed, is only used in pharmaceutical applications, has different prices and is delivered as packed (as opposed to the bulk deliveries of potash used as a fertiliser). However, as explained above, the product concerned shares the same basic physical characteristics and basic chemical