Council Regulation (EC) No 1891/2005 of 14 November 2005 amending Regulation (EEC) No 3068/92 imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia or Ukraine

COUNCIL REGULATION (EC) No 1891/2005

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amending Regulation (EEC) No 3068/92 imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia or Ukraine

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. Previous investigations and existing measures

(1) Following an investigation (the previous investigation), the Council, by Regulation (EC) No 969/2000[(2)], amended the measures originally imposed by Regulation (EEC) No 3068/92[(3)] on imports of potassium chloride originating, *inter alia*, in Russia (the existing measures).

(2) In March 2004, by means of a notice published in the *Official Journal of the European Union*[(4)], the Commission launched, on its own initiative, a partial interim review of the existing measures to examine whether they should be amended to take account of the enlargement of the European Union to 25 Member States on 1 May 2004 (Enlargement).

(3) The results of that partial interim review showed that it was in the interests of the Community to provide for the temporary adaptation of the existing measures so as to avoid a sudden and excessively negative impact on importers and users in the ten new Member States immediately following Enlargement.

(4) To this end, in May 2004, by Regulation (EC) No 1002/2004[(5)], the Commission accepted undertakings from two exporting producers in Russia, namely JSC Silvinit and JSC Uralkali for a period of one year. In June 2005, by Commission Regulation (EC) No 858/2005[(6)] new undertakings, which expire on 13 April 2006, were accepted from the two exporting producers in Russia. In addition, in order to provide for the exemption from the anti-dumping duties imposed by Regulation (EEC) No 3068/92

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on imports made under the terms of the undertakings, Regulation (EEC) No 3068/92 was amended by Regulation (EC) No 992/2004[7].

(5) It should also be noted that all references to 'the Community' or 'the Community of 15' in the present Regulation shall be taken to mean, unless otherwise specified, the Community as constituted immediately before Enlargement.

2. Grounds for the present reviews

(6) In January 2004, separate requests were received from JSC Silvinit and JSC Uralkali (the applicants) for individual partial interim reviews of the existing measures pursuant to Article 11(3) of the basic Regulation.

(7) The applicants alleged and provided sufficient *prima facie* evidence that a comparison of normal value based on their own costs/domestic prices and their export prices to the Community would lead to a removal of dumping. Therefore, the continued imposition of the existing measures at the existing levels, which were based on the level of dumping previously established, were no longer necessary to offset dumping.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of partial interim reviews, the Commission published notices of initiation and commenced an investigation[8].

3. Period of investigation

(9) The investigation was limited to dumping and covered the period from 1 April 2003 until 30 March 2004 (the investigation period or IP).

4. Parties concerned by the investigation

(10) The Commission officially advised the representatives of the exporting country, the applicants and the Community industry of the initiation of the interim reviews and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing. The Commission also sent questionnaires to the applicants. Questionnaires replies were received from the applicants and from an exporting trader in Russia related to one of the applicant companies.

(11) The Commission sought and verified all information it deemed necessary for the purpose of the determination of dumping and carried out verifications of the replies to the questionnaire at the premises of the following companies:

(a) Exporting producers in Russia:

JSC Silvinit, Solikamsk, Perm Region, Russia,

JSC Uralkali, Berezniki, Perm Region, Russia.

(b) Related exporter to JSC Silvinit:

International Potash Company, Moscow, Russia.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(12) The product is the same as in previous investigation, i.e. potassium chloride (potash or KCl) and is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphorus, potassium). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide (K_2O) on the dry anhydrous product. It is also used as a raw material in the manufacture of certain industrial and pharmaceutical products.

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

— potassium content not exceeding 40 % K_2O — falling within Combined Nomenclature (CN) code 3104 20 10,

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

— potassium content over 62 % K_2O — falling within CN code 3104 20 90.

(14) It should be recalled that in the previous investigation it was found that imports of certain special mixtures or blends with an unusually high content of potash which do not fall under any of the CN codes for potash indicated above, should also be considered as the product concerned. This conclusion was reached as such mixtures and blends shared the same basic physical and chemical characteristics and have the same uses as the basic categories mentioned above. Accordingly, such mixtures or blends falling within CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91 and ex 3105 90 99 were also included in the present investigation and constitute part of the product concerned.

2. Like product

(15) It was established that, as there were no differences in the physical or chemical properties between the product exported from Russia to the Community and the product produced in Russia and sold on the Russian domestic market, they were considered to be like products for the purposes of the present investigation.

C. DUMPING WITH REGARD TO THE APPLICANTS

1. Normal value

(16) As far as the determination of normal value is concerned, it was first established whether the total volume of each of the applicants' total domestic sales of the like product were representative in comparison with their respective total export sales volumes to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered to be representative when each of the applicants' domestic sales volumes of the like product constituted at least 5 % of their respective total export sales volumes to the Community during the investigation period. On this

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basis, for both applicants, overall domestic sales of the product concerned during the IP were found to have been made in representative quantities.

(17) Subsequently, by defining the product types in accordance with the TARIC codes under which the product is classified (i.e. by standard grade or other than standard grade, including granular) and by the packing or form in which it is shipped (i.e. in bulk, in bags or in containers), an analysis was made as to whether the domestic sales of each product type were representative. Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.

(18) As a result of this analysis, it was found that one exporting producer, JSC Silvinit, had only sold one exported product type in representative quantities on the domestic market. For the other exporting producer, JSC Uralkali, it was found that all exported product types had been sold in representative quantities on the domestic market.

(19) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade by establishing the proportion of profitable sales to independent customers of the type in question.

(20) In this regard, it was found for JSC Uralkali that its domestic sales prices for the best sold product type exported to the Community (the best sold export type) accounting for over 99 % of such exports, showed unusual trends during the investigation period. It was established that, during the investigation period, 77 % of domestic sales of the best sold exported type had been made to one customer in Russia and that the sales price to this particular customer had, in the space of one month in the middle of the investigation period, more than doubled. Price rises for the same product type sold to other domestic customers also rose at the same time, but only by a margin of around 40 %. Examination of price rises for other potash types sold domestically showed similar price increases of around 40 % during the investigation period.

(21) In view of this particular market situation with regard to pricing for a key product type used to calculate the dumping margin, pursuant to Article 2(3) of the basic Regulation it is considered that such sales do not permit a proper comparison. Given the significance of such sales in the domestic sales volumes of the type in question, and the importance of this type in the overall export volume of potash exported by the company concerned to the Community, it is considered reasonable to disregard these specific sales to the customer in question. The remaining domestic sales of this product type to other customers were found to be below the 5 % threshold considered necessary for them to be regarded as representative. Accordingly, normal value for this product type was calculated on the basis of the cost of production of the exporting producer concerned, plus a reasonable amount for selling, general and administrative costs and profit. The amounts for selling, general and administrative costs and for profit were based on actual data pertaining to production and sales, in the ordinary course of trade,

of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

(22) It was submitted by Uralkali that the 'particular market situation' foreseen in Article 2(3) of the basic Regulation is not applicable for the sales of the product concerned to the customer in question and therefore the domestic prices for the product type concerned should have been used to establish normal value. In this regard it was argued (i) that the provision of Article 2(3) of the basic Regulation would not apply in case of 'artificially high prices' and (ii) that special conditions applied to only one specific client could not be considered to constitute a 'particular market situation' for the Russian domestic market as a whole. Moreover, it was claimed that the prices in question were resulting from 'market forces' and reflected 'the actual situation on the market'.

(23) With regard to the above, it should be noted that the particular market situations referred to in Article 2(3) of the basic Regulation are not exhaustive and that the particularity of the market should be assessed, *inter alia*, in light of price variations and trends rather than solely on the basis of the absolute level of the prices. In this case both low priced sales transactions and high priced transactions were excluded from the calculations since they did not reflect a level of prices of a lasting nature and since those prices did not appear to reflect market forces as such trends were not found for any other product type or for any other client of Uralkali. Secondly, Article 2(3) of the basic Regulation provides that normal value may be constructed in situations where '… because of a particular market situation such sales do not permit a proper comparison …'. This clearly allows that, as in the current situation, sales to a customer which are considered not to permit a proper comparison may be disregarded as a basis for establishing normal value. This conclusion does not relate to the Russian market as a whole but rather to these sales of Uralkali.

(24) As concerns JSC Silvinit, where the sales volume of one product type, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the adjusted unit cost, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that product type made during the IP, irrespective of whether these sales were profitable or not.

(25) For the other product type of JSC Silvinit, which was sold in insufficient quantities for the domestic prices to provide an appropriate basis for the establishment of the normal value, another method had to be applied. In this case, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the adjusted unit cost of the exported type, a reasonable percentage for selling, general and administrative expenses and a reasonable margin of profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.