Council Regulation (EC) No 945/2005 of 21 June 2005 amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in, inter alia, Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 945/2005

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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(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. 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 imposed by Regulation (EC) No 658/2002[(4)] 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.

(2) By Regulation (EC) No 132/2001[(5)], the Council imposed a definitive anti-dumping duty of EUR 33,25 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in, *inter alia*, Ukraine.

(3) Regulation (EC) No 658/2002 and Regulation (EC) No 132/2001 are referred to hereinafter as 'the original Regulations' and the anti-dumping duties established in those Regulations are referred to as 'the existing measures'.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 945/2005. (See end of Document for details)*

2. Request for review

(4) On 15 March 2004, the Commission received a request pursuant to Article 11(3) of the basic Regulation to examine the scope of existing measures with a view to including new product types.

(5) The request was lodged by the European Fertiliser Manufacturers Association ('EFMA') on behalf of producers representing a major proportion of the Community production of ammonium nitrate.

(6) The request referred to new product types defined as ammonium nitrate fertilisers with a nitrogen ('N') content exceeding 28 % and up to 33 % by weight, to which up to and including 5 % of P_2O_5 equivalent (phosphorus nutrient, 'P') and/or up to and including 5 % of K_2O equivalent (potassium nutrient, 'K') were added, blended, mixed or processed. These products are referred to hereafter as 'new product types mentioned in the request'.

(7) It was argued that the new product types mentioned in the request had essentially the same basic physical and chemical characteristics as the product concerned and were sold through the same channel of sales to the same end-users for the same purposes. In addition, the request mentioned that the new product types were classified, when imported into the Community, under the following CN codes: 3105 10 00, 3105 20 10, 3105 20 90, 3105 51 00, 3105 59 00 and 3105 90 91.

3. Initiation

(8) On 2 July 2004, by a notice ('notice of initiation') published in the *Official Journal of the European Union*, the Commission initiated a partial interim review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia and Ukraine pursuant to Article 11(3) of the basic Regulation. The interim review was limited in scope to the definition of the product concerned.

(9) By a submission made on 20 September 2004, the EFMA informed the Commission that a Russian producer of the product concerned had just started production of a new product type not mentioned in the request, with an N content exceeding 28 % to which 6 % of P was added. As a consequence, the EFMA requested the Commission to consider solutions enabling it to properly address all new product types of ammonium nitrate with an N content exceeding 28 % by weight. Since the notice of initiation made reference to 'new product types' without any further detail concerning their composition, it was considered that this latest request was already covered by the notice of initiation.

(10) Some interested parties argued that the Commission had to convert 'ex-officio' the partial review into a full review in the light of a number of circumstances which had occurred since the existing measures were imposed, including the granting of market economy status to Russia and the enlargement of the EU to 10 new countries. However, no evidence of sufficient accuracy and adequacy was submitted which pointed to a change in the level of the measures. It was therefore considered that there

were no grounds for an 'ex-officio' full interim review. Firstly, the granting of market economy status to Russia, 'per se', did not mean that the circumstances with regard to dumping and injury for individual producers had automatically changed. No evidence was submitted showing that a dumping margin calculated on the basis of Russian costs and prices, as opposed to those in an analogue country, were significantly different from those found in the previous investigations. Secondly, enlargement did not automatically vary the dumping and injury parameters which formed the basis of the existing measures and no sound evidence was presented to justify any change in this respect.

(11) In addition, some interested parties requested clarification as to why the initiation of the investigation concerned Ukraine as well, considering that in the request no reference was made to imports of new product types originating in that country. Given that the interim review was limited in scope to the clarification of the product concerned, it was considered that any finding in this respect was not linked to circumstances that were specific to any individual country, but would rather apply to all imports of ammonium nitrate subject to measures, whatever the origin.

(12) Finally, a Community producer of the product concerned argued, during the investigation, that one of the new product types was classified under CN code 3105 90 99. With reference to CN codes 3105 20 90 (mentioned in the request) and 3105 90 99, the investigation revealed that these codes covered only fertilisers with a nitrogen content not exceeding 10 % by weight on the dry anhydrous product. It was therefore concluded that these codes could not be taken into account, since they did not cover, 'a fortiori', fertilisers which, in normal conditions, contained more than 28 % of nitrogen by weight.

4. Questionnaires

(13) The Commission officially advised the authorities of the exporting countries and all the parties known to be concerned of the initiation of this review. Questionnaires were sent to 16 producers/exporters in Russia and one in Ukraine, as well as to importers, users, producers and relevant associations in the Community, named in the request or otherwise known to the Commission. 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.

(14) Completed replies to the questionnaires were received from two exporting producers in Russia and one in Ukraine, and from 11 producers in the Community. A number of exporting producers, producers in the Community, importers and relevant associations manifested themselves as interested parties and sent comments. Given the availability of all necessary information and data needed, it was not considered necessary to carry out verification visits at the premises of the companies that submitted completed replies.

5. Investigation period

(15) The investigation period ('IP') covered the period from 1 July 2003 to 30 June 2004. Data were collected from 2000 up to the end of the IP to investigate trends in

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sales, imports and purchases in the Community market of the product concerned and of the new product types.

B. PRODUCT CONCERNED UNDER THE ORIGINAL REGULATIONS

(16) The product concerned is ammonium nitrate originating in Russia and Ukraine, falling within CN codes 3102 30 90 (ammonium nitrate other than in aqueous solutions) and 3102 40 90 (mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with an N content exceeding 28 % by weight). Ammonium nitrate is a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid, and its N content exceeds 28 % by weight in prilled or granular form.

(17) It is noted that the product concerned always incorporates inorganic non-fertilising substances, the presence of which is necessary, since they act as a stabiliser. Occasionally, it can also incorporate secondary nutrients and/or micro-nutrients[(6)] in very limited quantities. The presence of inorganic non-fertilising substances, secondary nutrients and/or micro-nutrients can be considered as marginal and does not have any influence on the customs classification of the product concerned. Ammonium nitrate, inclusive of these substances and/or nutrients (hereinafter referred to as 'marginal substances and/or nutrients'), is referred to in this Regulation as the 'product concerned'.

C. RESULTS OF THE INVESTIGATION

(18) In order to determine whether the existing measures were no longer sufficient to counteract the dumping which was causing injury, it was examined whether: (1) the new product types mentioned in the request shared the same chemical and physical characteristics and end-uses as the product concerned; (2) there were new product types other than those mentioned in the request which shared or may have shared the same chemical and physical characteristics and end-uses as the product concerned; (3) on the basis of the facts established under the previous points, the definition and description of the product concerned had to be clarified in the light of the new circumstances.

(19) For the definition of the chemical and agronomic concepts used in this Regulation, use has been made of the definitions given in Regulation (EC) No 2003/2003[(7)] (the 'Fertilisers Regulation') of primary nutrients (N, P, K), secondary nutrients (calcium, magnesium, sodium and sulphur), micro-nutrients (boron, cobalt, copper, iron, manganese, molybdenum and zinc), ammonium nitrate fertilisers of high nitrogen content (N above 28 %), straight fertilisers (only one primary nutrient) and compound fertilisers (more than one primary nutrient).

1. Chemical and physical characteristics and end-uses of the product concerned and of the new product types mentioned in the request

(20) The product concerned is manufactured from ammonia (NH_3) and nitric acid (HNO_3), the combination of which results in ammonium nitrate (NH_4NO_3, hereinafter referred to as 'AN'). The N content of the product concerned exceeds 28 % by weight (it normally ranges between 33 % and 34 %). The ratio between the AN content and the

N content, which depends on the atomic weight of the elements, is 2.86. Consequently, since the product concerned contains more than 28 % by weight of N, it automatically contains more that 80 % by weight of AN (normally between 94 % and 97 %)[8]. As mentioned in recital 17, the product concerned also incorporates marginal substances and/or nutrients, the overall content of which can never exceed 20 % by weight, given that at least 80 % of the product concerned is represented by AN.

(21) Two key features characterise the chemical composition of the product concerned: the expression of the N content and the overall level of the N and AN content. The N is expressed as nitric nitrogen (nitrate ion NO_{3-}) and as ammoniacal nitrogen (ammonium ion NH_{4+}), and the ratio between the two is 1:1. The level of the N content always exceeds 28 % by weight and, consequently, as seen above, the level of AN always exceeds 80 % by weight.

(22) With respect to the new product types mentioned in the request, it was found that they were also manufactured from ammonia and nitric acid, the N content exceeded 28 % by weight and, consequently, the AN content exceeded 80 % by weight. Beside AN, these new product types could also incorporate marginal substances and/or nutrients. In these products the N was also expressed as nitric nitrogen and ammoniacal nitrogen and the ratio between the two was also approximately 1:1.

(23) However, the new product types mentioned in the request underwent an additional process aimed at adding primary nutrients[9] other than N, i.e. P and/or K, whose presence transformed the product into a compound fertiliser[10]. This compound fertiliser could be obtained chemically or by blending. In spite of this addition of other primary nutrients and regardless of the type of transformation (chemical or blending), it was found that this process did not affect any of the key chemical features of the AN contained therein, that is to say the expression of the N content and the overall level of N and AN, which exceeded, respectively, 28 % and 80 % by weight.

(24) In particular, with regard to the overall level of N and AN, a distinction had to be made between compound fertilisers obtained chemically and obtained by blending. In the first case, the maximum content of 5 % of P and/or K, as indicated in the request, was found to be chemically compatible with an AN content exceeding 80 % (the maximum room left for P and/or K in compounds exceeding 80 % of AN varied between a maximum amount of 7,4 % and 12 % by weight according to the component used — 7,4 % for ammonium polyphosphate, 9,2 % for diammonium phosphate, 10,4 % for monoammonium phosphate and 12 % for potassium chloride). In the case of compounds obtained by blending operations, it was found that the resulting product consisted in granules or prills of the product concerned blended with granules or prills of P and/or K nutrients in a way that ensured that, out of the overall weight of the compound, at least 80 % was represented by AN.

(25) With regard to the physical properties, it was found that these were strictly related to the agronomic characteristics and could therefore be examined in relation to the latter. In general, the agronomic properties of a fertiliser depended mainly on the primary nutrients[11] contained therein, their expression and their quantity by weight.