Commission Regulation (EC) No 858/2005 of 6 June 2005 accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of potassium chloride originating in the Republic of Belarus or the Russian Federation and making imports of potassium chloride originating in the Republic of Belarus and the Russian Federation subject to registration

COMMISSION REGULATION (EC) No 858/2005

of 6 June 2005

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of potassium chloride originating in the Republic of Belarus or the Russian Federation and making imports of potassium chloride originating in the Republic of Belarus and the Russian Federation subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Articles 8, 21 and 22(c) thereof,

Having regard to Council Regulation (EC) No 992/2004 of 17 May 2004 amending Regulation (EEC) No 3068/92 imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia or Ukraine[(2)],

Having regard to Commission Regulation (EC) No 1002/2004 of 18 May 2004 accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of potassium chloride originating in Belarus, Russia or Ukraine and making imports of potassium chloride in Belarus or Russia subject to registration[(3)],

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) The Council, by Regulation (EEC) No 3068/92[(4)], imposed a definitive anti-dumping duty (the measures) on imports of potassium chloride (potash) originating in the Republic of Belarus (Belarus) and the Russian Federation (Russia) and Ukraine. By Regulation (EC) No 969/2000[(5)], the Council amended Regulation (EEC) No 3068/92.

(2) In March 2004, by means of a notice published in the *Official Journal of the European Union*[(6)], the Commission launched, on its own initiative, a partial interim review of the measures in force on imports of potash originating in Belarus and Russia in order 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 measures so as to avoid a sudden and excessively negative economic impact immediately following enlargement on importers and users in the 10 new Member States (EU-10) which acceded to the European Union on enlargement.

(4) In this regard, the Council, by Regulation (EC) No 992/2004, authorised the Commission to accept undertaking offers respecting the conditions set out in recitals 27 to 32 of the same Regulation. On this basis, and pursuant to Articles 8, 11(3), 21 and 22(c) of the basic Regulation, the Commission, by Regulation (EC) No 1002/2004 accepted undertaking offers (special Enlargement Undertakings) from (i) an exporting producer in Belarus jointly with companies situated in Austria, Lithuania and Russia, (ii) from an exporting producer in Russia jointly with companies situated in Russia and Austria, and (iii) from an exporting producer in Russia jointly with a company situated at the time of acceptance in Cyprus.

(5) In addition, in order to provide for the exemption from the anti-dumping duties imposed by Regulation (EEC) No 3068/92 on imports into the EU-10 made under the terms of the special Enlargement Undertakings, Regulation (EEC) No 3068/92 was amended by Regulation (EC) No 992/2004.

(6) In April 2004, by means of two notices published in the *Official Journal of the European Union*[(7)], pursuant to Article 11(3) of the basic Regulation, the Commission launched at the request of the two Russian exporting producers with special Enlargement Undertakings partial interim reviews of the anti-dumping measures applicable to the companies concerned (partial interim reviews for Russia).

(7) In April 2005, by means of a notice published in the *Official Journal of the European Union*[(8)], pursuant to Article 11(2) of the basic Regulation, the Commission launched at the request of the Community Industry for potash an expiry review of the anti-dumping measures applicable to Russia (expiry review for Russia) and to Belarus (expiry review for Belarus).

(8) In parallel, by means of a notice published in the *Official Journal of the European Union*[(9)], pursuant to Article 11(3) of the basic Regulation, the Commission launched at the request of the exporting producer in Belarus a review of the anti-dumping measures applicable to it (partial interim review for Belarus).

(9) Offers of new special Enlargement Undertakings for a further temporary period have been made by the companies concerned.

B. DURATION OF THE MEASURES

(10) It should be recalled that acceptance of the undertakings in question was an exceptional measure adopted pursuant to Article 22(c) of the basic Regulation as the Minimum Import Prices (MIPs) established (and to be respected by the companies concerned) were not directly equivalent to the anti-dumping duty.

(11) In this regard, the MIPs were set at levels which were higher than previous import prices from the countries concerned, but below prices which totally eliminated the injurious effects of dumping, as would normally be the case. It was intended that these MIPs, applied over a transitional period, would help lessen the economic impact of the anti-dumping measures for importers and particularly end users in the EU-10 during the period following enlargement.

(12) As concerns the length of this transitional period, it was stipulated in recital 14 of Regulation (EC) No 1002/2004 that acceptance of the Special Enlargement Undertakings would be limited to an initial period of 12 months without prejudice to the normal duration of the existing measures. It follows from this that acceptance of new undertakings, but with the same provisions, could be accepted if the circumstances so warranted (e.g. if the conditions prevailing at the time of acceptance of the original undertakings still existed), provided that the transitional character of these exceptional measures is respected. Accordingly, in determining whether new undertakings are required, it is necessary to make an appraisal of the effectiveness of the measures.

C. APPRAISAL

(13) Analysis of the monthly sales reports submitted to the Commission by the companies concerned backed up by available official statistical data showed that although there has been convergence in prices, a difference still appears to prevail between the prices charged by the companies with special Enlargement Undertakings for the product concerned to customers in the EU-10 and those prevailing in the Community as constituted before enlargement (EU-15).

(14) The question of a shortage of supply on the EU-10 market was also raised by certain interested parties and the alleged inability of the Community Industry to supply potash to new customers in the EU-10 who, prior to enlargement, had traditionally sourced the product concerned from Belarus or Russia.

(15) In this regard, it is to be expected that a period of re-adjustment would be required by the Community Industry given the complex logistical and sales network changes required for sales to the EU-10, to service what is in effect a new market for them. Nevertheless, the Commission found that intra-Community exports of potash from the largest producer in the EU-15 to customers in the EU-10 had more than doubled between 2003 and 2004, even if the starting point was comparatively low, which would indicate that partial changes to the structure of supply in the EU-25 have started to occur.

(16) As concerns compliance with the special Enlargement Undertakings, verification visits to the exporting producers showed that the companies concerned had observed the MIPs and that the volumes exported to the EU-10 had not exceeded the levels of the quantitative ceilings stipulated in the undertakings. In addition, it was found that the companies were broadly respecting their traditional patterns of trade with individual customers in the EU-10.

(17) Moreover, according to the information available, there have been no apparent ‘spill-overs’ from the EU-10 into the EU-15 of imports of the product concerned

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 858/2005. (See end of Document for details)*

which had benefited from the exemption to the anti-dumping duties afforded by the undertakings.

D. CONCLUSION

1. General

(18) The available information suggests that certain of the negative conditions which prevailed prior to enlargement and which necessitated the undertakings still appear to exist.

(19) In addition, although there appear to have been some changes in the supply chain with Community Industry supplying more potash to the EU-10, information received from various interested parties indicated that there may be short term supply difficulties in the EU-10 for the product concerned, even though the Community Industry has started to increase its sales there.

(20) It should also be recalled that a significant degree of difficulty in planning for potash customers in the EU-10 market has also undoubtedly been created due to (i) the fact that there was uncertainty in the market concerning whether the current anti-dumping measures would expire in May 2005 following their five-year imposition, and (ii) the unknown results of the two partial interim reviews for Russia initiated in April 2004 by the Commission.

(21) In view of the foregoing, it is considered that particular account should be taken of the question of Community Interest and the concerns of the many importers and end users of potash in the EU-10. It is considered that the protection afforded by the current anti-dumping duties would still cause a degree of financial hardship to be suffered by the importers and end users if these anti-dumping duties were to be applied at the present time.

(22) Therefore, on balance, it is concluded that the acceptance of new special Enlargement Undertakings offered by the companies concerned for a further period is justified as this will not only lessen the economic impact for buyers in the EU-10 but also help to alleviate the problems of supply in the EU-10 in the short term.

(23) As concerns the length of the further period of application of the special Enlargement Undertakings, as mentioned above, an expiry review for Belarus and Russia and a partial interim review for Belarus was initiated on 13 April 2005. Given that the expiry review will normally be concluded within twelve months, it is considered appropriate to accept the new special Enlargement Undertakings until 13 April 2006.

(24) Given also that the level of the anti-dumping measures for Belarus and Russia are being reviewed, it is considered appropriate to leave the level of the MIPs unchanged pending the outcome of these reviews.

(25) With regard to the level of the quantitative ceilings to be applied, it should be noted that these correspond to the quantitative ceilings for the initial period of twelve months.