Commission Regulation (EC) No 1996/2004 of 19 November 2004 accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in the Russian Federation and Ukraine and continuing to make imports of ammonium nitrate originating in the Russian Federation or Ukraine subject to registration

COMMISSION REGULATION (EC) No 1996/2004

of 19 November 2004

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in the Russian Federation and Ukraine and continuing to make imports of ammonium nitrate originating in the Russian Federation or Ukraine 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,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) By Regulation (EC) No 132/2001[(2)], the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate (the product concerned) originating in Ukraine. By Regulation (EC) No 658/2002[(3)], following an expiry and interim review, the Council imposed a definitive anti-dumping duty on imports of the product concerned originating in the Russian Federation (Russia).

(2) In March 2004, the Commission announced, through the publication of a notice in the *Official Journal of the European Union*[(4)], the initiation of a partial interim review of the existing measures on imports of the product concerned originating in Russia and Ukraine (the measures) to examine whether they should be adapted to take account of certain consequences of the enlargement of the European Union to 25 Member States (enlargement).

(3) The Council concluded that it was in the interest 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 10 new Member States acceding to the European Union (the EU-10) immediately following enlargement. It was considered that the best means of achieving this was through the acceptance of undertakings offered by the cooperating parties, with elements for minimum import prices and quantitative ceilings.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1996/2004. (See end of Document for details)*

(4) Accordingly, by Regulation (EC) No 1001/2004[(5)], the Commission accepted as a special measure short-term undertakings from: (i) an exporting producer of the product concerned in Ukraine (OJSC 'Azot'); (ii) an exporting producer in Russia (OJSC MCC Eurochem in respect of goods produced at its production facilities of JSC Nak Azot, Russia) and sold by its related company (Cumberland Sound Ltd, British Virgin Islands); (iii) two related Russian exporting producers jointly (Joint Stock Company 'Acron' and Joint Stock Company 'Dorogobuzh').

(5) In order to provide for an exemption from the anti-dumping duties afforded by the acceptance of the undertakings, Regulation (EC) No 658/2002 and Regulation (EC) No 132/2001 were amended by Council Regulation (EC) No 993/2004.

(6) It was stipulated in Regulation (EC) No 1001/2004 that acceptance of the undertakings would be limited to an initial period of six months (the original period) without prejudice to the normal duration of the existing measures and that they would lapse after this period unless the Commission considered it appropriate to extend their period of application.

(7) As set out in recital 15 of Regulation (EC) No 1001/2004, the continued acceptance of the undertakings would be subject to an appraisal at the end of the six-month period to verify whether the exceptional and negative conditions for end-users in the EU-10 which led to the acceptance of the undertakings still exist. As part of the overall appraisal, an evaluation of the compliance of the companies concerned with their undertakings was also made.

B. APPRAISAL

1. Content of the current undertakings

(8) The existing undertakings offered by the companies oblige them, *inter alia*, to export in accordance with their traditional pattern of trade to customers in the EU-10 at or above certain minimum import prices (MIPs). These MIPs significantly eliminate the injurious dumping found in the original investigations. Such exports are also to be made within the framework of quantitative ceilings established on the basis of previous, traditional export flows to the EU-10.

(9) The terms of the undertakings also oblige the signatory companies to provide the Commission with regular and detailed information in the form of a monthly report of their sales to the EU-10 (or resales by any related parties in the Community) and to accept verification visits by the Commission. In order, also, to be able to fully monitor the effectiveness of the undertakings, written agreement was received from the exporters' traditional customers in the EU-10 that they too would allow on-the-spot verification visits at their premises.

2. Compliance with the current undertakings

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

3. Analysis of conditions for continued acceptance of undertakings

(11) 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 had been some convergence in prices, a marked difference still existed between the prices for the product concerned in the EU-10 and the EU-15. In addition, it was noted that import volumes from Russia and Ukraine into the EU-10 had declined since enlargement, however, in view of the fact that the period under examination is one of the 'low seasons' for the product concerned, they still remained significant. In addition, as indicated in recital 28 of Regulation (EC) No 993/2004, abnormal increases in export volumes to the EU-10 were found prior to enlargement in 2003 and the first few months of 2004. It is considered that this might also have contributed to the decrease in the quantities imported into the EU-10 following enlargement.

C. CONCLUSION

1. Acceptance of undertakings

(12) Given that the exceptional and negative conditions which prevailed prior to enlargement and which necessitated that the undertakings still exist, and that the terms of the undertakings have been observed during the initial period of their application by the companies concerned, it is considered that the acceptance of undertakings offered by the companies concerned for a further period is justified.

(13) As concerns the length of this further period, it is considered that a period of application of more than six months would negate the notion of the undertakings being of a transitional nature, therefore, their acceptance will only be from 21 November 2004 to 20 May 2005 (the final period).

(14) With regard to the level of the quantitative ceilings to be applied for the final period, it should be noted that these have been calculated following the same methodology as was used to establish the quantitative ceilings for the original period (however, unlike in the original period when deductions from the traditional volumes were made to take account of abnormal import volumes prior to enlargement, no such adjustments will be made for determining the quantitative ceilings for the final period). Nevertheless, given the trend of increased consumption for this product in the EU-10, a growth factor has been taken into account when establishing the quantitative ceilings for the final period for each exporting producer benefiting from an undertaking.

(15) In conformity with Regulation (EC) No 993/2004, the undertakings oblige each individual producing exporter to respect MIPs within framework of import ceilings and in order that the undertakings can be monitored, the exporting producers concerned have also agreed to broadly respect their traditional selling patterns to individual

customers in the EU-10. The exporting producers are also aware that if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place, or it may adjust the level of the ceiling, or it may take other remedial action.

(16) It is also a condition of the undertakings that if they are breached in any way, the Commission will be entitled to withdraw acceptance thereof resulting in definitive anti-dumping duties being imposed in their place.

(17) The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission.

(18) In order that the Commission can monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation pursuant to an undertaking is presented to the relevant customs authority, exemption from the duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Regulation (EC) No 993/2004. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate anti-dumping duty will instead be payable.

2. Consultation of Member States

(19) In conformity with recital 15 of Regulation (EC) No 1001/2004, Member States were consulted on the proposal to accept undertakings for a further period. Certain Member States considered that the level of the MIPs should be raised. It should be recalled, however, that these undertakings are not equivalent to an anti-dumping duty since the MIPs established are at lower levels than would usually be the case. Rather, they serve as a 'safety net' below which, prices in the EU-10 should not fall. In view of this and the short-term character of the undertakings, together with the exceptional circumstances under which the undertakings were accepted, revision of the MIP levels at the present time is not considered to be appropriate.

3. Disclosure to interested parties

(20) All interested parties which had previously made themselves known were advised of the intention to accept undertakings. The Community Industry producers' association stated that it would not oppose such acceptance for a further period provided that this did not adversely affect its situation. A national producer organisation in Poland echoed, however, the views of certain Member States that the level of the MIPs should be raised since the price levels established did not allow its producers to cover their costs. However, for the reasons stated in the previous recital, revision of the MIPs is not considered to be appropriate at the present time.