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 the Republic of Belarus, the Russian Federation or Ukraine and making imports of potassium chloride originating in the Republic of Belarus and the Russian Federation subject to registration

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 the Republic of Belarus, the Russian Federation or Ukraine 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)], as last amended by Regulation (EC) No 461/2004[(2)] (the 'basic Regulation'), and in particular Articles 8, 11(3), 21 and 22(c) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) Pursuant to Regulation (EC) No 969/2000[(3)] the Council amended and extended the measures imposed by Regulation (EC) No 3068/92[(4)], as amended by Regulations (EC) No 643/94[(5)] and (EC) No 449/98[(6)], on imports into the Community of potassium chloride (the 'product concerned') originating in the Republic of Belarus ('Belarus'), the Russian Federation ('Russia') and Ukraine. Pursuant to Regulation (EC) No 999/2004[(7)] the Council amended Regulation (EC) No 969/2000.

(2) The measures are fixed duty amounts, established by category and grade of product, ranging from 19,51 EUR/tonne to 48,19 EUR/tonne in the case of Belarus, 19,61 EUR/tonne to 40,63 EUR/tonne in the case of Russia and 19,61 EUR/tonne to 48,19 EUR/tonne in the case of Ukraine.

2. Investigation

(3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union*[(8)] the initiation of a partial interim review of the measures in force ('the measures') pursuant to Articles 11(3) and 22(c) of the basic Regulation.

(4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('enlargement') and, bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

(5) All interested parties known to the Commission, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 (the 'EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time-limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

3. Result of the investigation

(6) As set out in Council Regulation (EC) No 992/2004 the investigation concluded that it is in the Community interest to adapt the existing measures, provided that such adaptation does not significantly undermine the desired level of trade defence.

4. Undertakings

(7) In accordance with the conclusions of Regulation (EC) No 992/2004, the Commission, in conformity with Article 8(2) of the basic Regulation, suggested undertakings to the companies concerned. As a result, undertakings were subsequently offered by (i) one exporting producer of the product concerned in Belarus (Republican Unitary Enterprise Production Amalgamation Belaruskali) jointly with its related companies in Russia (JSC International Potash Company), Austria (Belurs Handelsgesellschaft mbH) and Lithuania (UAB Baltkalis), (ii) an exporting producer in Russia (JSC Silvinit) jointly with its related companies in Russia (JSC International Potash Company) and Austria (Belurs Handelsgesellschaft mbH) and (iii) a second exporting producer in Russia (JSC Uralkali) jointly with a company in Cyprus (Fertexim Ltd).

(8) It should be noted that, in application of Article 22(c) of the basic Regulation, these undertakings are considered as special measures since, in accordance with the conclusions of Regulation (EC) No 992/2004, they are not directly equivalent to an anti-dumping duty.

(9) Nevertheless, in conformity with Regulation (EC) No 992/2004, the undertakings oblige each individual producing exporter to respect minimum import prices within the 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 EU10. The exporting producers are also aware that if it is found that these traditional 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.

(10) 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.

(11) 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.

(12) 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 992/2004. 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.

(13) In view of all the above, the offers of undertakings are considered acceptable.

(14) The acceptance of the undertakings is limited to an initial period of 12 months without prejudice to the normal duration of the measures. However, six months after acceptance of the undertakings, their continued acceptance will be subject to an appraisal by the Commission to verify whether the exceptional and negative conditions for end users in the EU10 which led to the acceptance of the undertakings still exist.

B. REGISTRATION OF IMPORTS

(15) In view of the unusual circumstances of this case and the inherent risk of breaches of undertakings caused by the price differences between the EU10 and the EU15 and their short-term character, it is considered that sufficient grounds exist to make certain imports of the product concerned subject to registration for a maximum period of nine months in accordance with Article 14(5) of the basic Regulation.

(16) Customs authorities are therefore directed to take the appropriate steps to register imports into the Community of the product concerned originating in Belarus and Russia exported by the companies which have offered acceptable undertakings and for which benefit from the exemption to the anti-dumping duties is sought.

(17) In the event of a finding of a breach of the undertakings, duties may be levied retroactively on goods entered into free circulation in the Community from the date of the breach of the undertaking,

HAS ADOPTED THIS REGULATION: