Council Regulation (EC) No 993/2004 of 17 May 2004 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 and collecting definitively the provisional duty imposed on imports of ammonium nitrate originating in Poland and Ukraine, and terminating the anti-dumping proceeding in respect of imports originating in Lithuania

COUNCIL REGULATION (EC) No 993/2004

of 17 May 2004

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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 Articles 8, 11(3), 21 and 22 (c) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

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

(2) The measures are a specific duty of 47,07 EUR/tonne in the case of Russia and 33,25 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*[(4)] 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.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 993/2004. (See end of Document for details)*

(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.

3. Parties concerned by the investigation

(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.

(6) In this regard, the following interested parties made their views known:

(a) *Community producers Association:*

European Fertilizers Manufacturers Association (EFMA).

(b) *Exporting producers:*

Nak Azot, Moscow, Russia

OAO Kirovo — Chepetsky Chimkombinat, Kirovo — Chepetsk, Russia

Cherkasy Azot, Cherkasy, Ukraine

JSC Acron, Vellky Novgorod, Russia.

B. PRODUCT UNDER CONSIDERATION

(7) The product under consideration is the same as in the original investigation, i.e. ammonium nitrate, a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid and the nitrogen content exceeds 28 % by weight in prilled or granular form.

(8) The product concerned currently falls 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 nonfertilising substances, with a nitrogen content exceeding 28 % by weight).

C. RESULTS OF THE INVESTIGATION

1. Submissions of interested parties in exporting countries

(9) Three Russian and one Ukrainian exporting producers, Russian and Ukrainian authorities claimed that, due to the high level of the anti-dumping duties and as a

consequence of the extension of the measures to the EU10, their traditional trade flows to the EU10 would be significantly disrupted.

(10) In particular, they claimed that the sudden sharp price increases triggered by the specific price anti-dumping duties rendered the product prohibitively expensive for the end users in the EU10.

2. Comments received from the Community Industry

(11) The Community Industry stated that although average prices in the EU10 were significantly lower than those in the European Union as constituted prior to 1 May 2004 ('the EU15'), it would not oppose any proposals for intermediate measures to be taken over a transitional period which do not adversely affect its situation.

3. Comments received from Member States

(12) The Spanish authorities expressed concerns, however, as the remaining Member States, they did not oppose the transitional measures proposed by the Commission.

(13) It was claimed that several EU10 Member States had imposed measures on the product concerned and that these measures ensured a level of protection in EU10 which lapsed by the Enlargement. The measures in place were:

(a) Safeguard quotas imposed in Poland in June 2002 on the imports of ammonium nitrate originating in Russia and in December 2002 safeguard measures on imports of ammonium nitrate originating in Ukraine;

(b) Safeguard measures imposed in Hungary in July 2003 with additional duty of 11 600 HUF/t on imports of ammonium nitrate originating in Russia and Ukraine;

(c) Safeguard measures imposed in Czech Republic in February 2003 with additional duty of 16 % on the imports of ammonium nitrate originating in Ukraine and safeguard measures with additional duty of 35 % on the product concerned originating in Russia.

(14) Despite that, the authorities of EU10 considered that special transitional arrangements should apply to imports of the product concerned from Ukraine and Russia following the Enlargement. In this regard, it was argued that the product concerned is of significant importance for agricultural users in the EU10 since it cannot be easily substituted by another product.

(15) It was further considered that a sharp and sudden increase in ammonium nitrate prices for farmers in the EU10 should be prevented; as they would, otherwise, face additional hardship in adjusting to the new competition of agricultural producers in the EU15. The importance of this issue was further underlined by the significant value of the exports (around EUR 59 million per annum) from Ukraine and Russia to the EU10 compared to exports to the EU15 of around 39 million Euros per annum from these countries.

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(16) It was therefore argued that import supply into the EU10 of the product concerned at prices which do not suddenly and sharply increase is of significant importance to these end users in the EU10.

(17) Accordingly, these authorities took the view that imports of the product concerned originating in Ukraine and Russia into the EU10 should receive special treatment with regard to the anti-dumping measures.

4. Assessment

(18) On the basis of the available data and information, an analysis was made which confirmed that a marked difference did exist between the prevailing prices for the product concerned in the EU10 and the EU15 (e.g. in EU10 in 2000-2003 average price was EUR 70 per tonne from Russia and EUR 84 per tonne from Ukraine, whilst in EU15 in 2000-2003 was EUR 100 per tonne from Russia and EUR 108 per tonne from Ukraine).

(19) The analysis also showed the import volumes coming into the EU10 from Ukraine and Russia were significant (in 2000-2003 on average around 817 thousand tonnes).

5. Conclusion

(20) All these various aspects and interests have been taken into account and considered as a whole. It emerges from this that the EU10 importers' and users' interests would be substantially negatively affected by the sudden application of the existing measures if they were not to be temporarily adapted.

(21) However, by contrast, as the interest of the Community Industry itself confirmed it, its interests would not be unduly negatively affected if the measures were to be temporarily adapted as they cannot currently fully satisfy the demands of customers in the EU10.

(22) In such circumstances, it can reasonably be concluded in view of the specific situation of Enlargement, that it is not in the Community interest to apply the existing measures without temporary adaptation. However, such adaptation with regard to imports of the product concerned into the EU10 should not be such as to significantly undermine the desired level of trade defense.

(23) To this end, different ways were examined on how to best protect the Community Industry from injurious dumping whilst, at the same time, take into account the Community interest aspects by lessening the economic shock of the anti-dumping duties to traditional buyers in the EU10 during the period of economic adjustment following Enlargement.

(24) Due to the existence of the protective measures in some EU10 Member States prior to Enlargement, it was considered that this could be best achieved by allowing the 50 % of traditional export volumes, i.e. export volumes not affected by the protective pre-Enlargement measures in EU10, from Ukraine and Russia to the EU10 be imported

free of anti-dumping duties for a transitional period, provided that, in lieu of levying anti-dumping duties, export prices to these Member States would be increased to levels which significantly contribute to the removal of injury. In this context, any exports to the EU10 above these traditional export volumes would be subject to the anti-dumping duties, as would exports to the EU15.

6. Undertakings

(25) Having assessed the different options on how best to allow these traditional export flows to the EU10 to continue, and ensure the significant contribution to the removal of injury, it was considered that the most appropriate means was through the acceptance of voluntary undertakings from the cooperating parties with elements for minimum import prices and quantitative ceilings. Therefore, in accordance with Article 8(2) of the basic Regulation, undertakings were suggested by the Commission to the exporting producers concerned.

(26) In this context, it should be noted that, in accordance with Article 22(c) of the basic Regulation, the special circumstances of Enlargement were taken into account when the terms of the undertakings were established. They constitute a special measure in that they provide a temporary way of adapting existing measures for the enlarged Community of twenty five Member States.

(27) It should also be noted that the undertakings are not directly equivalent to an anti-dumping duty since the minimum import prices established are at lower levels than would usually be the case. To do otherwise would, as mentioned above, render the price of the product concerned prohibitively expensive to end users in the EU10 and, therefore, not be in the Community interest. Nevertheless, the exporting producers undertook to raise their prices to levels which significantly contribute to the elimination of injury.

(28) Import volumes (‘ceilings’) were therefore established for the exporting producers Ukraine and Russia, using as a basis 50 % of their traditional export volumes to the EU10 in 2001 and 2002. It should be noted, however, that abnormal increases in export volumes to the EU10 observed in the last few months of 2003 and the first months of 2004 were deducted from the traditional volumes used for determining the ceilings.

(29) When selling to the EU10 under the terms of their undertakings, the exporting producers concerned should agree to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers should therefore be aware that any undertaking offer can only be considered as practicable, and therefore acceptable if, for sales covered by the undertakings, they would broadly maintain such traditional patterns of trade with their customers in the EU10.

(30) The exporting producers should also be aware that, under the terms of the undertakings, 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