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

COUNCIL REGULATION (EC) No 992/2004

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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) By Regulation (EC) No 969/2000[(2)] the Council amended and extended the measures imposed by Regulation (EC) No 3068/92[(3)], on imports into the Community of potassium chloride ('the product concerned') originating in the Republic of Belarus ('Belarus'), the Russian Federation ('Russia') and Ukraine.

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

(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.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 992/2004. (See end of Document for details)*

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 Association of Potash Producers

(b) *Exporting producers:*

Production Amalgamation Belaruskali, Soligorsk, Belarus

JSC Silvinit, Solikamsk, Russia

JSC Uralkali, Berezniki, Russia

(c) *Exporter:*

IPC, Moscow, Russia (related to JSC Silvinit and Production Amalgamation Belaruskali).

B. PRODUCT UNDER CONSIDERATION

(7) The product concerned is potassium chloride (potash, KCl) and is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphorus, potassium). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide (K_2O) on the dry anhydrous product. It is also used as a raw material in the manufacture of certain industrial and pharmaceutical products.

(8) Potash is generally commercialised in either a standard/powder form (standard potash) or in other than standard form that includes but is not limited to a granular form (granular potash). The product is generally classified into three basic categories, based on the K_2O content, namely:

— potassium content not exceeding 40 % K_2O — falling under CN code 3104 20 10,

— potassium content exceeding 40 % K_2O but less than or equal to 62 % — falling under CN code 3104 20 50,

— potassium content over 62 % K_2O — falling under CN code 3104 20 90.

(9) The anti-dumping measures in force specify different levels of anti-dumping duties for standard potash, on the one hand, and the remaining forms of potash,

including granular potash on the other. In this regard it should be recalled that in the last review investigation in 2000, it was found that imports of certain special mixtures or blends with an unusually high content of potash, which do not fall under of the CN codes indicated for potash indicated above, should be considered a product concerned. This conclusion was reached as such mixtures and blends shared the same basic physical and chemical characteristics and have the same uses as the basic categories mentioned above. As the present investigation has also not brought to light any consideration that the approach taken previously should not be continued, and accordingly and in order to ensure a consistent application of the anti-dumping measures, as well as to avoid erroneous classification, it has been considered necessary, in this Regulation, to confirm the finding of the previous review investigation that the content of K_2O of such mixtures and blends as being equal to or exceeding 35 %, up to a content of 62 % by weight, of the dry anhydrous product.

C. RESULTS OF THE INVESTIGATION

1. Submissions of interested parties in exporting countries

(10) Two Russian and one Belarusian exporting producers, one Russian exporter and the Russian 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.

(11) In particular, they claimed that the sudden sharp price increases triggered by the fixed price anti-dumping duties rendered the product prohibitively expensive for agricultural, industrial and pharmaceutical end users in the EU10.

(12) It should be noted that neither any exporting producer/exporter from Ukraine, nor the Ukrainian authorities came forward.

2. Comments received from the Community Industry

(13) The Community industry stated that although average prices in the EU10 were over 30 % lower than those in the European Union as constituted immediately 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 present trade patterns in the EU15.

3. Comments received from Member States

(14) The authorities of certain Member States of the EU10 including the Czech Republic, Hungary, Lithuania and the Slovak Republic considered that special transitional arrangements should apply to imports of the product concerned from Belarus and Russia following Enlargement.

(15) In this regard, it was argued that the product concerned is of strategic importance for industrial and agricultural users in the EU10 since it is not produced in these countries, nor can it easily be substituted by another product. It was also submitted that producers of the product concerned in the EU15 would not have the capacity to satisfy the demands of users in the EU10.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 992/2004. (See end of Document for details)*

(16) It was further considered that a sharp and sudden increase in potash fertiliser 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 87 million per annum) from Belarus and Russia to the EU10 compared to exports to the EU15 of around EUR 45 million per annum from these countries.

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

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

4. Assessment

(19) On the basis of the available data and information, an analysis was made which confirmed that a marked difference of around 32 % did exist between the prevailing prices for the same grades of the product concerned in the EU10 and the EU15 (e.g. standard grade of potash in the EU10 in 2003 was around EUR 79 per tonne, whilst the same grade in the EU15 in 2003 was, on average, approximately EUR 117 per tonne).

(20) The analysis also showed the import volumes coming into the EU10 from Belarus and Russia were significant in 2003 (around 1,1 million tonnes and therefore approximately 14 % of total estimated consumption of the EU10 and the EU15 together).

(21) It was also found that there is no production of the product concerned in the EU10 and that there is currently insufficient spare capacity amongst producers in the EU15 to be able to supply customers in the EU10. Moreover, given the nature of the product, it is considered that it would be difficult for buyers in the EU10 to suddenly change from their traditional sources of supply.

5. Conclusion

(22) 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.

(23) However, by contrast, as the Community industry itself confirmed, its interests would not be unduly negatively affected if the measures were to be temporarily adapted as under its present trade patterns in the EU15 it cannot currently fully satisfy the demands of customers in the EU10.

(24) 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 defence.

(25) 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 new Member States during the period of economic adjustment following the enlargement.

(26) It was considered that this could be best achieved by allowing the traditional export volumes from Belarus and Russia to the EU10 to 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, by way of minimum import prices ('MIP'), 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 normal anti-dumping duties, as would exports to the EU15.

6. Undertakings

(27) 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 would be 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 may be suggested by the Commission to the exporting producers concerned.

(28) In this context, it should be noted that, in accordance with Article 22(c) of the basic Regulation, the special circumstances of the enlargement may be taken into account when the terms of the undertakings are established. They will constitute a special measure in that they provide a temporary way of adapting existing measures for the EU25.

(29) It should also be noted that the undertakings will not be directly equivalent to an anti-dumping duty since the minimum import prices established may be 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 should undertake to raise their prices to levels which significantly contribute to the elimination of injury.

(30) Import volumes ('ceilings') should therefore be established for the exporting producers Belarus and Russia, using as a basis their traditional export volumes to the EU10 in 2001, 2002 and 2003. 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 should be deducted from the traditional volumes used for determining the ceilings.