Council Regulation (EC) No 658/2002 of 15 April 2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia

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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)], hereinafter referred to as 'the basic Regulation' and in particular Article 11(2) and (3) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations

(1) In May 1994, by Decision 94/293/EC[(2)], the Commission accepted undertakings with regard to imports of ammonium nitrate originating in Lithuania and Russia, following a regional anti-dumping proceeding concerning imports into the United Kingdom. The undertaking accepted from the Russian authorities was, however, breached within the first year of operation.

(2) In June 1994, a Community-wide anti-dumping investigation concerning ammonium nitrate originating in Lithuania and Russia was initiated subsequent to a complaint lodged by the European Fertiliser Manufacturers Association (EFMA). By Commission Decision 95/344/EC[(3)], the proceeding was terminated in respect of imports from Lithuania and in August 1995, the Council, by Regulation (EC) No 2022/95[(4)], imposed a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia. The measures applying to imports originating in Russia consisted of a variable duty equal to the difference between ECU 102,9 per tonne net of product ('minimum import price' or 'MIP') and the net cif price, Community frontier before customs clearance, in all cases where the latter was lower.

(3) Pursuant to a further investigation, which established that these measures were being absorbed, the measures were changed, in March 1998, by Regulation (EC) No 663/98[(5)], to a specific duty of ECU 26,3 per tonne.

2. Investigations concerning other countries

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(4) In October 1999, an anti-dumping investigation was initiated concerning imports into the Community of ammonium nitrate originating in Lithuania, Poland and Ukraine[6]. It showed that imports of ammonium nitrate originating in Poland and Ukraine were dumped and caused material injury to the Community industry, whereas imports originating in Lithuania were found not to be dumped. Consequently, by Regulation (EC) No 132/2001[7], definitive anti-dumping measures were imposed on imports of ammonium nitrate originating in Poland and Ukraine, while the proceeding was terminated in respect of imports originating in Lithuania. Duties were imposed in the form of a specific duty per tonne, in order to ensure the efficiency of the measures and to discourage any price manipulation.

3. Present investigation

3.1. Request for review

(5) Following the publication, on 24 February 2000, of the notice of the impending expiry of the anti-dumping measures in force on imports of ammonium nitrate originating in Russia[8], the Commission received a request for an expiry and an interim review pursuant to Article 11(2) and (3) of the basic Regulation, lodged by EFMA on behalf of producers representing a major proportion of Community production of ammonium nitrate ('applicant Community producers'). The request for an expiry review alleged that injurious dumping of imports originating in Russia would be likely to continue or to recur if measures were allowed to expire. The applicant's request for an interim review was based on the grounds that the current measures did not appear to be sufficient to counteract the injurious effects of dumping.

3.2. Notice of initiation

(6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation pursuant to Article 11(2) and (3) of the basic Regulation by a notice published in the *Official Journal of the European Communities*[9].

3.3. Period of investigation

(7) The investigation period ('IP') for the examination of continuation and recurrence of dumping and injury covered the period from 1 July 1999 to 30 June 2000. The examination of trends relevant for the assessment of continuation and/or recurrence of injury covered the period from 1 January 1996 up to the end of the IP ('period under review').

3.4. Parties concerned by the investigation

(8) The Commission officially advised the applicant Community producers, the exporting producers in Russia, the importers, users and associations known to be concerned, and the representatives of the exporting country concerned of the initiation of the review. The Commission sent questionnaires to the exporting producers,

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Community producers, importers, users and associations known to be concerned and to those who made themselves known within the time limit set in the notice of initiation.

(9) In order to allow Russian exporting producers to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned.

(10) Nine Community producers, one analogue country producer, two importers, one importers' association, and two users' associations replied to the questionnaires. With respect to the exporting country concerned, only one reply to the questionnaire was received.

3.5. Verification of information received

(11) The Commission sought and verified all information it deemed necessary for the purpose of a determination of the continuation or recurrence of dumping and injury and of the Community interest. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request and hold a hearing.

(12) Verification visits were carried out at the premises of the following companies:

Community producers:

— Grande Paroisse SA, France,

— Hydro Agri France, France,

— Kemira Ince Ltd, United Kingdom,

— Terra Nitrogen, United Kingdom;

analogue country producer:

— Mississippi Chemical Corporation, Yazoo City, USA.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(13) The product under consideration is the same as in the previous investigation, i.e. ammonium nitrate ('AN' or 'product under consideration'), 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.

(14) 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 non-fertilising substances, with a nitrogen content exceeding 28 % by weight).

2. Like product

(15) As both the previous investigation and the investigation concerning other countries have shown, AN is a pure commodity product and its basic chemical characteristics are comparable whatever the country of origin. There are two different types of AN: granular and prilled. Granular AN has a larger diameter and therefore

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has better spreading characteristics. The investigation has shown that imports of AN originating in Russia are prilled and that the majority of AN produced by the Community industry is granular. However, since granular and prilled AN have the same chemical characteristics and end use and are perceived by users as being interchangeable, they are to be regarded as two different types of the same product.

(16) Therefore, the product produced and sold in the Community by the applicant Community producers is considered to be a like product to that produced in Russia and sold domestically or exported to the Community. The same is true with regard to AN sold on the domestic market of the analogue country.

C. DUMPING AND LIKELIHOOD OF A CONTINUATION OF DUMPING

(17) In accordance with Article 11(2) of the basic Regulation, it is necessary to examine whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.

(18) In examining whether there is a likelihood of a continuation of dumping, it is necessary to verify whether dumping exists at present and whether any such dumping is likely to continue.

1. Dumping during the IP

1.1. Volume of exports to the Community during the IP

(19) Exports of AN from Russia amounted to 282 000 tonnes during the IP, i.e. about 20 % of total Community imports of AN and about 5 % of Community AN consumption. These imports are only slightly below the level found in the previous investigation period, i.e. 340 000 tonnes between April 1993 and March 1994.

1.2. MET and IT

(20) Claims for MET and/or IT were received from three exporting producers. As two of these companies later failed to submit their reply to the Commission's questionnaire within a reasonable period of time, it was considered appropriate not to process further their MET/IT claim forms. Indeed, in the absence of the necessary data for carrying out a dumping calculation, the claims for MET and IT could not be considered. These companies were therefore considered as non-cooperating with the investigation and were subsequently informed that the findings would be based on the facts available, in accordance with Article 18 of the basic Regulation.

(21) The third company having submitted an MET/IT claim form was found to have no exports of the product concerned to the Community during the IP. In the absence of any actual export sales data for the IP, no dumping calculation was possible in the context of either the expiry review or the interim review. Consequently, neither MET nor IT could be considered.

1.3. Analogue country

(22) Since imports from Russia fall under Article 2(7)(a) of the basic Regulation except where MET is granted, normal value has to be based on information obtained in an appropriate market economy third country. In the notice of initiation, the Commission suggested Poland as an appropriate analogue country because it was used as an analogue country in other investigations concerning the same product, and the production processes and access to raw materials are comparable to those prevailing in Russia.

(23) Comments were received by the European Fertiliser Import Association (EFIA) objecting to this choice. Their main objection was that Poland has very high domestic fertiliser prices due to its high level of protection against fertiliser imports and also it has the highest gas prices in Central Europe because of its monopolistic state-owned gas distribution system. As an alternative, EFIA proposed Lithuania on the grounds of its close proximity and similar manufacturing conditions to Russia, its absence of barter trade and the fact that the sole Lithuanian producer purchases gas from a Russian supplier, which also supplies the Russian producers, at prices which vary in accordance with the published cif northern Europe price for ammonia.

(24) However, neither the known Polish producers nor the sole Lithuanian producer were willing to cooperate.

(25) The Commission then approached producers in Australia and the USA as suggested by EFMA. As only one producer from each of these countries was willing to cooperate, a further analysis was carried out into the importance of their respective domestic sales in terms of domestic market share, and into the representativeness of their domestic sales volume compared to Russian exports to the Community. This analysis showed that, whereas both producers had representative domestic sales, the Australian producer did not face any significant competition in its domestic market. Although the USA producer also had significant domestic sales, it faced price competition from both domestic and foreign companies. Consequently, the USA was selected as the most appropriate analogue country.

(26) The sales of AN by the USA producer on its domestic market were examined and found to be representative in comparison with Russian export sales of AN to the Community.

(27) Following disclosure, EFIA argued that the lack of cooperation from the sole Lithuanian producer should not have prevented the Commission from using Lithuania as the analogue country, as it had relevant information from its recent anti-dumping proceeding concerning imports of ammonium nitrate from Lithuania, Ukraine and Poland[(10)]. There was indeed an overlap of the IPs in the two proceedings. However, this overlapping period was limited to the first three months of the IP for the current proceeding. In accordance with Article 6(1) of the basic Regulation, for a representative finding, the IP should normally cover a period of six months immediately prior to the initiation of the proceeding. In these circumstances it was considered that data from the first three months of the IP would not be sufficiently representative for the seasonal and volatile AN market. In addition, it should be stressed that using information received