Commission Implementing Decision (EU) 2018/1703 of 12 November 2018 terminating the partial interim review concerning imports of ammonium nitrate originating in Russia

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] ('the basic Regulation'), and in particular Article 11(3) thereof,

Whereas:

A. PROCEDURE

1. Previous investigations and existing anti-dumping measures

(1) By Council Regulation (EC) No 2022/95[(2)], the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Pursuant to a further investigation, which established that the duty was being absorbed, the measures were amended by Council Regulation (EC) No 663/98[(3)]. Following a first expiry review and a first interim review pursuant to Articles 11(2) and 11(3) of Council Regulation (EC) No 384/96[(4)] the Council, by Regulation (EC) No 658/2002[(5)], imposed a definitive, country-wide anti-dumping duty of EUR 47,07 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Subsequently, a product scope interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 was carried out and, by Council Regulation (EC) No 945/2005[(6)], a definitive anti-dumping duty ranging between EUR 41,42 per tonne and EUR 47,07 per tonne was imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 20 originating in Russia.

(2) Following a second expiry review and a second partial interim review pursuant to Articles 11(2) and 11(3) of Regulation (EC) No 384/96, the Council, by Regulation (EC) No 661/2008[(7)], maintained the measures in force. The duty was left unchanged, except for the EuroChem group, for which the fixed amount of duty was set between EUR 28,88 and EUR 32,82 per tonne.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2018/1703. (See end of Document for details)*

(3) The European Commission ('the Commission'), by Decision 2008/577/EC[8], accepted the undertakings' offers with a quantitative ceiling from the Russian producers JSC Acron and JSC Dorogobuzh, members of the Acron Holding Company and from EuroChem group. By Decision 2012/629/EU[9], the Commission withdrew its acceptance of the undertaking offered by the EuroChem Group because of the impracticability of the undertaking.

(4) By judgment of 10 September 2008[10], interpreted by judgment of 9 July 2009[11], the General Court annulled Regulation (EC) No 945/2005 in so far as it concerned JSC Kirovo-Chepetsky Khimichesky Kombinat, part of OJSC UCC UralChem. The Council, by Regulation (EC) No 989/2009[12], amended Regulation (EC) No 661/2008 accordingly. Consequently, the anti-dumping duty of EUR 47,07 per tonne for the company Kirovo applies only to imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90.

(5) Following a third expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009[13], the Commission, by Implementing Regulation (EU) No 999/2014[14], maintained the measures in force.

(6) The Commission, by Implementing Regulation (EU) 2016/415[15], withdrew the acceptance of the undertaking for the Acron Holding Company due to the impracticability of the undertaking.

(7) The Acron Holding Company is currently subject to the country-wide anti-dumping duty rate ranging between EUR 41,42 per tonne and EUR 47,07 per tonne depending on the product type.

2. Request for a partial interim review limited to dumping

(8) In April 2016, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation submitted by two Russian exporting producers PJSC Acron and PJSC Dorogobuzh and their affiliated trading company Agronova Europe AG in Switzerland (jointly referred to as 'the Acron group' or 'the applicant' or 'the exporting producer'). The request was limited in scope to the examination of dumping as far as the Acron group was concerned. The Acron group provided sufficient evidence that the continued imposition of the measure at its current level was no longer necessary to offset injurious dumping.

3. Initiation of a partial interim review limited to dumping

(9) Having determined, after informing the Member States, that sufficient evidence existed to justify the initiation of a partial interim review limited to the examination of dumping as far as the applicant was concerned, the Commission announced on 17 August 2017, by a notice published in the *Official Journal of the European Union*[16] ('Notice of Initiation'), the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation.

(10) The Commission officially informed the applicant, the authorities of the exporting country and the Union industry of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

(11) On the same day, the Commission announced, by way of a Notice of Initiation[17], the initiation of another partial review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia, limited to the examination of injury pursuant to Article 11(3) of the basic Regulation.

4. Investigation

(12) In order to obtain the information necessary for its investigation, the Commission sent questionnaires to the Acron group. Replies were received within the deadline set for that purpose.

(13) The Commission sought and verified all information it deemed necessary for the determination of dumping. Verification visits were carried out at the premises of the Acron group, namely PJSC Acron and PJSC Dorogobuzh and their related trader Agronova Europe AG in Switzerland. As of 5 January 2018 Agronova Europe AG changed its name to Acron Switzerland AG.

5. Review investigation period

(14) The investigation of the level of dumping covered the period from 1 July 2016 to 30 June 2017 (‘the review investigation period’).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(15) The product under review is solid fertilisers with an ammonium nitrate content exceeding 80 % by weight originating in Russia (‘the product concerned’), currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 20.

2. Like product

(16) The product concerned and the product produced and sold by the Acron group domestically, on the Union as well as on other exports markets share the same basic physical and chemical characteristics.

(17) The Commission therefore concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. LASTING NATURE OF CHANGED CIRCUMSTANCES

(18) In accordance with Article 11(3) of the basic Regulation, the Commission examined whether the circumstances on the basis of which the current dumping margin was established have changed, and whether such change was of a lasting nature.

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(19) Gas is the most important raw material for ammonium nitrate representing over 60 % of the total cost of production. Similarly to previous investigations, the Commission found that domestic gas prices in Russia are regulated by the State via federal laws and do not reflect normal market conditions, where prices are principally set by production costs and profit expectations.

(20) The Commission cannot qualify changes in domestic raw material prices as lasting because such changes are normally the result of volatile market forces. In any case, the Commission found that gas prices in Russia were regulated by the State via federal laws and did not reflect normal market conditions, where prices are principally set by production costs and profit expectations. Gas prices set by the State are directly applicable to state-owned companies, such as Gazprom. Gazprom is the biggest gas provider in the country with a market share above 50 %, and therefore it acts as a price-setter. On this basis, this situation is similar to the one that prevailed in previous investigations. Therefore, the Commission considers that the circumstances regarding the gas market in Russia have not changed and, as a result, that a modification of the measures pursuant to Article 11(3) of the basic Regulation is not warranted on that basis.

(21) In the review request, the applicant raised some further claims such as withdrawal of its undertaking, internal reorganisation within the Acron group, Russia's accession to the WTO and currency exchange rate fluctuations. The relevance of these claims to the dumping margin or to the alleged lasting nature of the circumstances could however not be clearly ascertained. In particular, the applicant failed to provide sufficient evidence that its export price to the Union has changed due to the withdrawal of the undertaking. Similarly, no sufficient evidence was provided to demonstrate that the internal reorganisation within the Acron group has resulted in a change in the normal value/domestic sales prices. The applicant also failed to provide evidence as to how Russia's WTO accession impacted on the dumping margin. Finally, the Commission considers that currency exchange fluctuations do not constitute a change of a lasting nature as they are influenced by multiple market forces and tend to fluctuate over time.

(22) Following disclosure, the applicant first claimed that the Commission failed to disclose all the elements regarding the applicant's dumping margin calculation and that would constitute a breach of its rights of defence.

(23) In this respect, the Commission notes that the applicant had received the General Disclosure Document detailing all considerations on the basis of which the Commission decided to terminate this investigation. This allowed the applicant to fully exercise its rights of defence. Given that the Commission concluded that there was no change of circumstances of lasting nature which would justify the recalculation of the applicant's dumping margin, the argument on any possible miscalculation of the dumping margin became moot. Thus, the claim was rejected.

(24) Second, the applicant contested the conclusion of the Commission regarding the absence of changes of lasting nature that could have an impact on the dumping margin.

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(25) The applicant claimed that the last time its individual dumping margin was established was in 2008, when Russia was not yet a WTO Member. The dumping margin at the time was calculated with the use of a gas-cost adjustment methodology that was justified by the conclusion that domestic prices for natural gas in Russia were regulated and could not be considered to reasonably reflect a price normally payable in undistorted markets. In 2012, however, Russia acceded to the WTO and made commitments to ensure that producers/distributors of natural gas in the Russian Federation would operate, within the relevant regulatory framework, on the basis of normal commercial considerations, based on recovery of costs and profit. These commitments were incorporated in the Accession Protocol of the Russian Federation to the WTO dated 17 December 2011.

(26) In this respect, the Commission points out that the purpose of the present investigation is not to establish whether or not Russia's current natural gas regulatory system is consistent with its WTO commitments. The Commission takes no position in this regard. Rather, the objective of an investigation pursuant to Article 11(3) of the basic Regulation is to determine whether there is a lasting change of circumstances that warrants the re-calculation of the anti-dumping duty for the applicant. However, after having assessed the conditions of the natural gas market in Russia during the review investigation period, the Commission concluded on the basis of the findings described in recital 20, that the natural gas market in Russia is still distorted.

(27) The fact that Russia undertook a number of commitments when acceding to the WTO and that no dispute settlement has been launched for non-compliance does not alter this assessment. The Commission's conclusion was based on its investigation and the evidence on file. WTO Members enjoy a political discretion to bring or to abstain from bringing cases before the WTO. The absence of cases regarding Russia for a breach of its commitments — can therefore not automatically lead to a conclusion that such distortions do not exist.

(28) Third, the applicant also claimed that the Commission failed to take into account that gas prices in Russia have substantially and continuously increased over the last 14 years and more than doubled since the interim review investigation, when Acron group's dumping margin was last recalculated. It is claimed that the increase in domestic gas prices has never been considered by the Commission. In addition, the applicant contested that Gazprom would act as a ‘price-setter’ on the Russian domestic market.

(29) As the Commission noted in recital 20 above, the domestic price of natural gas is still distorted and the fact that the prices have increased in the past 14 years does not contradict that assessment. Regarding Gazprom's market position, the Commission found that given its market share and prominent position, Gazprom acts as a price-setter on the Russian domestic gas market. This is also acknowledged in the annual report of Novatek, one of the independent gas providers[18].

(30) Fourth, the applicant claimed that the Commission disregarded evidence it has submitted regarding alleged changes in the cost structure of the Union industry. In particular, the Commission would have disregarded the effect of the equalisation trend