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COUNCIL REGULATION (EEC) No 3068/92

of 23 October 1992

imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia or Ukraine

(OJ L 308, 24.10.1992, p. 41)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 643/94 of 21 March 1994	L 80	1	24.3.1994
►**M2**	Council Regulation (EC) No 449/98 of 23 February 1998	L 58	15	27.2.1998
►**M3**	Council Regulation (EC) No 969/2000 of 8 May 2000	L 112	4	11.5.2000
►**M4**	Council Regulation (EC) No 992/2004 of 17 May 2004	L 182	23	19.5.2004

Corrected by:

►**C1** Corrigendum, OJ L 2, 5.1.2001, p. 42 (969/2000)

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COUNCIL REGULATION (EEC) No 3068/92

of 23 October 1992

imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia or Ukraine

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from Countries not members of the European Economic Community ([1]), and in particular Article 11 thereof,

Having regard to the proposal presented by the Commission after consultation within the Advisory Committee as provided for in that Regulation,

Whereas:

A. **PROVISIONAL MEASURES**

(1) By Regulation (EEC) No 1031/92 ([2]), the Commission imposed a provisional anti-dumping duty on imports into the Community of potassium chloride originating in Belarus, Russia or Ukraine. By Regulation (EEC) No 2442/92 ([3]) the Council extended this duty for a period ot exceeding two months.

B. **SUBSEQUENT PROCEDURE**

(2) Following the imposition of the provisional anti-dumping duty, the Belarussian, Russian and Ukrainian exporters, the Community producers and certain importers requested and were granted a hearing by the Commission. They also submitted comments in writing.

(3) The parties' oral and written comments were considered, and the Commission altered its conclusions accordingly where necessary.

(4) This investigation was not concluded within the period specified in Article 7 (9) (a) of Regulation (EEC) No 2423/88 owing to the complexity of the proceedings, particularly the detailed checking of the many figures and arguments put forward.

C. **PRODUCT, LIKE PRODUCT**

(5) The product which is the target of the proceeding is potassium chloride or potash muriate (termed 'potash'), and is usually used as an agricultural fertilizer. Information gathered during the Investigation shows that potash is available in two grades: 'standard' (powder) or 'granulated' (granules). As explained in recitals 8 to 10 of Regulation (EEC) No 1031/92, the potassium content (expressed as the percentage of the weight of the dry anhydrous product represented by K_2O) of both grades varies. Each grade has three different specifications: K_2O content of 40 % or less, K_2O content of between 40 and 62 %, and K_2O content of over 62 %. The three specifications correspond to CN codes 3104 20 10, 3104 20 50 and 3104 20 90.

(6) For the purposes of the preliminary conclusions, the 'over 62 %' specification was disregarded, for the reasons given in recital 10 of Regulation (EEC) No 1031/92.

Following the hearings conducted after the publication of Regulation (EEC) No 1031/92, the Commission decided to take the

([1]) OJ No L 209, 2. 8. 1988, p. 1.
([2]) OJ No L 110, 28. 4. 1992, p. 5.
([3]) OJ No L 243, 25. 8. 1992, p. 1.

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'over 62 %' specification into account for its final findings, as it emerged from the information gathered that although this specification was most often used in pharmaceuticals and industry its physical and chemical characteristics were largely identical to the specifications with a lower potassium content, and it could therefore be used in their place. The Commission therefore considered the different grades and specifications of potash to be one and the same product.

It should be pointed out, however, that the specification with the highest potassium content does not exist in granulated form at the moment, seemingly for technical and economic reasons. It is therefore unnecessary to distinguish between the standard and granulated grades in the case of potash with a K_2O content of over 62%. The Council confirms these findings.

D. **DUMPING**

(a) **Normal value**

(7) Since Belarus, Russia and Ukraine are still considered non-market economy countries, normal value had to be calculated in accordance with Article 2 (5) of Regulation (EEC) No 2423/88. The choice of Canada, the world's second largest producer, was not disputed by any of the parties, and normal value was therefore established on the basis of Canadian domestic prices in the case of granular potash and on Canadian and US prices for standard potash, Canadian sales of which were too low to constitute a representative basis relative to imports into the Community from the former USSR.

(8) Since the production costs of the mining firm which assisted in the investigation were greater than Canadian and US market prices, the Community producers asked for normal value to be assessed on the basis of that firm's production costs. However, during the investigation, the Commission verified that Canadian and US market prices still made it possible for other producers to make profits in normal trade transactions. It then emerged that the firm was bearing temporary and exceptional costs because of the special situation of the area of Canada in which its mine was located, and because the mine had started operations a short time before. To add these costs to those of the exports from the former USSR would have been unfair and contrary to Article 2 (5) (a) of Regulation (EEC) No 2423/88.

Establishing normal value on the basis of price levels on the competitive Canadian and US markets is therefore a reasonable and appropriate approach. The Council confirms the Commission's findings and the findings given in recitals 13 to 16 of Regulation (EEC) No 1031/92.

(b) **Export price**

(9) The export prices of potash exported by producers in the former USSR were determined in the manner described in recitals 17 to 20 of Regulation (EEC) No 1031/92, and in accordance with the terms of Article 2 (8) (b) of Regulation (EEC) No 2423/88.

(c) **Comparison**

(10) Normal value and export prices were compared at the ex-mine stage, transaction by transaction.

(11) Certain importers pressed for an adjustment in connection with the deduction of sea freight costs, arguing that they used cheaper (when compared to other companies) vessels from the former USSR for transportation between the ports of the former USSR and the Community. The costs selected by the Commission were those actually paid by the main importer. The Commission calculated the sea freight costs on that basis, obtaining a figure lower than that established in Regulation (EEC) No 1031/92.

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(12) In connection with haulage costs between the mines and ports of the former USSR, which had been calculated on the basis of Canadian mines and ports as described in recital 20 of Regulation (EEC) No 1031/92, one importer claimed that account should be taken of the fact that one of the three production sites (the Belaruskali mine) was closer to a port. This was considered, and nothing was found in the record of the proceeding or in the importers' or exporters' replies to indicate that it was possible to determine the source of potash imported into the Community from the former USSR, and thus the portion which had come from the closest mine. The Commission therefore judged it reasonable and appropriate to assume that each site contributed an equal portion of potash exports to the Community. The cost of transporting the potash between plants and ports in the former USSR was therefore determined on the basis of Canadian transport costs, while taking into account the distances between each of the production sites in the former USSR and the ports.

(13) The exporters and some of the importers claimed that there was a difference in grade and in the anti-caking treatments supposedly necessary for certain end-uses which justified a downward adjustment of the prices of potash from the former USSR. In the light of the fact that the chemical characteristics of potash from Canada, the former USSR and the Community are strictly identical, the Commission had to dismiss the argument concerning quality. With regard to the argument concerning anti-caking treatment, the Commission found no difference in manufacturing processes, and the investigation showed no proof that potash originating in the countries of the former USSR needed any kind of special treatment when compared to potash from other countries in order to make it fit for use. No adjustment was therefore found to be justified.

(14) The Commission did, however, observe that potash from the former USSR did not always exactly match potash from the Community and Canada in terms of crystal size. The exporters and a number of importers furthermore pointed out that deliveries and shipping of potash from the former USSR were less reliable, while these considerations do not alter the fundamental characteristics of the product, the Commission thought an adjustment of the order of 2 % to be reasonable in the light of the consumers' image of potash from the former USSR. The Council confirms these findings.

E. **DUMPING MARGIN**

(15) The final examination of the facts revealed that potash from Russia, Belarus and Ukraine had been dumped. The dumping margin is equal to the difference between the normal value and the export price. In view of the way in which the exporters which participated in the investigation were organized and the fact that they were represented by a single state organization, a single dumping margin was calculated for all of them. The average weighted dumping margin so calculated was 24 % of the total cif value of the exports in question. The Council confirms these findings.

F. **INJURY**

(16) The Commission pointed out in its preliminary conclusions that substantial injury had been caused to Community producers (recitals 24 to 33 of Regulation (EEC) No 1031/92). No new argument was put forward in this connection. The Council confirms that Community producers have suffered substantial injury.

G. **CAUSAL LINK BETWEEN DUMPING AND INJURY**

(17) In recitals 34 to 37 of Regulation (EEC) No 1031/92, the Commission pointed out that the increase in the volume of

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cheaper potash exports from the countries of the former USSR had coincided with growing losses in the Community industry. All the parties concerned agreed that the potash market was a transparent one and extremely sensitive to price changes. It was thus clear that imports of potash from the former USSR at prices below those charged by the Community industry had caused that industry serious injury.

With regard to other considerations, the possibility of exports from other sources affecting the Community industry could not be dismissed. The Commission made a distinction between the potential effects of such imports and the injury caused by the imports which are the subject of this proceeding, however. The reason for this was the relatively small volume of imports from other sources and the absence of evidence of price undercutting. The Commission was furthermore aware that the demand for potash has decreased in the last few years. The effects of this consideration have, however, been dissociated from the injury caused by imports from the former USSR. In fact the injury is mainly indicated by more pronounced losses. The Commission investigation, moreover, did not yield any findings proving or likely to constitute proof that the Community producers' management practices could have contributed to the injury sustained.

(18) In the light of the foregoing and the reasons put forward in recitals 34 to 37 of Regulation (EEC) No 1031/92, the Council confirms that dumped imports of potash from Belarus, Russia and Ukraine, taken in isolation, have caused serious injury to Community producers.

H. **DUTY**

(19) The Commission has recalculated the level of duty needed to remove the injury according to the method set out in recital 38 of Regulation (EEC) No 1031/92. No objections to this method were expressed, and the Council confirms that the definitive duty should be equal to the dumping margin.

With regard to the form of the duty, the Commission moreover considers that the margin of manœuvre available to exporters in countries which still have no market economy, and the effect on the entire potash market of even slight price undercutting, mean that neither a fixed-rate nor an *ad valorem* duty would be certain to remove the injury caused by dumping. Since no new arguments have been advanced on this issue, the Commission has concluded that an anti-dumping duty should be adopted in the form of a minimum price.

(20) Since the value of the products is related essentially to their K_2O content, the minimum price should be calculated definitively for the standard and granulated grades of each of the three specifications according to the method set out in recital 40 of Regulation (EEC) No 1031/92. The Council confirms these findings.

I. **COMMUNITY INTEREST**

(21) The parties have presented no further facts or arguments concerning Community interest to the Commission. The Council confirms the Commission's conclusions, contained in recitals 41 to 48 of Regulation (EEC) No 1031/92, that it is in the Community's interest to remove the injury caused by the observed dumping of exports from Belarus, Russia and Ukraine, and thus to halt the decline of Community output without denying the exporters concerned access to the Community market.

J. **UNDERTAKING**

(22) The Belarussian, Russian and Ukrainian exporters offered to propose a price undertaking. However, the offer concerned an undertaking in principle and was not based on any specific price. The Commission considered this simple undertaking in principle

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to be unacceptable, and informed the exporters concerned of its decision and the reasons behind it.

K. COLLECTION OF THE PROVISIONAL DUTY

(23) In view of the size of the dumping margins established and the degree of injury to the Community industry, the Council judges it necessary to collect the amounts secured by way of provisional anti-dumping duty up to the level of the definitive duty, with the balance being released,

HAS ADOPTED THIS REGULATION:

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Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of potassium chloride falling within CN codes 3104 20 10, 3104 20 50, 3104 20 90 and on special mixtures falling within CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91, ex 3105 90 99 originating in Belarus, Russia and Ukraine.

2. For the purpose of paragraph 1 of this Article potassium chloride will be either potassium chloride not containing any additional fertilising elements or potassium chloride containing additional fertilising elements in special mixtures. For the purpose of the application of the anti-dumping duty, special mixture is defined as a blend of two or more fertilising elements. ►C1 Such a mixture is subject to an anti-dumping duty if the K_2O content of the mixture or blend is equal to or exceeds 35 %, up to a content of 62 %, by weight, of the dry anhydrous product. ◄ ►C1 ——————— ◄

3. The amount of duty shall be equal to the fixed amount in euro per tonne of KCl shown below per category and grade (standard potash is to be understood as potash in powder form):

Belarus

Potassium chloride not containing any additional fertilising elements:

Category:	With a potassium content evaluated as K_2O, by weight, not exceeding 40 % on the dry anhydrous product		With a potassium content evaluated as K_2O, by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product		With a potassium content evaluated as K_2O, by weight, exceeding 62 % on the dry anhydrous product
Grade	Standard	Other than standard (including granular)	Standard	Other than standard (including granular)	
TARIC code	3104 20 10 10	3104 20 10 90	3104 20 50 10	3104 20 50 90	3104 20 90 00
Fixed amount (EUR/tonne)	19,51	30,84	29,51	46,65	48,19

Potassium chloride containing additional fertilising elements in special mixtures:

▼C1

	With a potassium content evaluated as K_2O, by weight, equal to or exceeding 35 % but not exceeding 40 % on the dry anhydrous product	With a potassium content evaluated as K_2O, by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product
TARIC Code	3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10	3105 20 10 20, 3105 20 90 20, 3105 60 90 20, 3105 90 91 20, 3105 90 99 20
Fixed amount (EUR/tonne)	30,84	46,65

▼M3

Russia

Potassium chloride not containing any additional fertilising elements:

Category:	With a potassium content evaluated as K_2O, by weight, not exceeding 40 % on the dry anhydrous product		With a potassium content evaluated as K_2O, by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product		With a potassium content evaluated as K_2O, by weight, exceeding 62 % on the dry anhydrous product
Grade	Standard	Other than standard (including granular)	Standard	Other than standard (including granular)	
TARIC code	3104 20 10 10	3104 20 10 90	3104 20 50 10	3104 20 50 90	3104 20 90 00
Fixed amount (EUR/tonne)	19,61	26,01	29,65	39,33	40,63

Potassium chloride containing additional fertilising elements in special mixtures:

▼C1

	With a potassium content evaluated as K_2O, by weight, equal to or exceeding 35 % but not exceeding 40 % on the dry anhydrous product	With a potassium content evaluated as K_2O, by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product
TARIC Code	3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10	3105 20 10 20, 3105 20 90 20, 3105 60 90 20, 3105 90 91 20, 3105 90 99 20
Fixed amount (EUR/tonne)	26,01	39,33

▼M3

Ukraine

Potassium chloride not containing any additional fertilising elements:

Category:	With a potassium content evaluated as K_2O, by weight, not exceeding 40 % on the dry anhydrous product	With a potassium content evaluated as K_2O, by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product	With a potassium content evaluated as K_2O, by weight, exceeding 62 % on the dry anhydrous product

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Grade	Standard	Other than standard (including granular)	Standard	Other than standard (including granular)	
TARIC code	3104 20 10 10	3104 20 10 90	3104 20 50 10	3104 20 50 90	3104 20 90 00
Fixed amount (EUR/tonne)	19,61	30,84	29,65	46,65	48,19

Potassium chloride containing additional fertilising elements in special mixtures:

▼C1

	With a potassium content evaluated as K_2O, by weight, equal to or exceeding 35 % but not exceeding 40 % on the dry anhydrous product	With a potassium content evaluated as K_2O, by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product
TARIC Code	3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10	3105 20 10 20, 3105 20 90 20, 3105 60 90 20, 3105 90 91 20, 3105 90 99 20
Fixed amount (EUR/tonne)	30,84	46,65

▼M3

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93, the amount of anti-dumping duty, calculated on the basis of the fixed amounts set out above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

5. The provisions in force with regard to customs duties shall apply.

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Article 1 a

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.

2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

(a) the goods declared and presented to customs correspond precisely to the product described in Article 1;

(b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

(c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.

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Article 2

The amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 1031/92 shall be definitively collected up to the levels resulting from the application of the definitive duties imposed in Article 1 (1).

The balance of the security collected shall be released.

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Article 3

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX

The following elements shall be indicated on the commercial invoice accompanying the company's sales of potassium chloride to the Community which are subject to any Undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company mentioned in Article 1 of Commission Regulation [INSERT NUMBER] issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
   - Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN I, PCN 2, etc.),
   - plain language description of the goods corresponding to the PCN concerned,
   - company product code number (CPC) (if applicable),
   - CN code,
   - quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
   - price per tonne,
   - the applicable payment terms,
   - the applicable delivery terms,
   - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation [INSERT NUMBER] I declare that the information provided in this invoice is complete and correct.'