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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 663/98

of 23 March 1998

amending Regulation (EC) No 2022/95 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia

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], and in particular Article 12 thereof,

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

A. **PROCEDURE**

1. **Previous measures**

(1) In May 1994, by Commission Decision 94/293/EC [2], anti-dumping measures were adopted with regard to imports of ammonium nitrate originating in Lithuania and Russia, following a regional anti-dumping proceeding concerning imports into the United Kingdom. Measures were in the form of the acceptance of undertakings which were intended to limit exports from each country to the United Kingdom to 100 000 tonnes per annum. The undertaking accepted from the Russian authorities was, however, breached within the first year of its operation.

(2) In June 1994, a Community-wide anti-dumping investigation concerning imports of ammonium nitrate originating in Lithuania and Russia was initiated [3] subsequent to a complaint lodged by the European Fertiliser Manufacturers Association (EFMA).

In August 1995, the Council, by Regulation (EC) No 2022/95 [4], imposed a definitive anti-dumping duty, in the form of a variable duty, on imports of ammonium nitrate originating in Russia. The amount of duty was set at the difference between a minimum import price of ECU 102,9 per tonne net of product and the net cif price, Community frontier before customs clearance, where the latter was lower. The Commission simultaneously terminated the regional anti-dumping proceeding in respect of imports of ammonium nitrate originating in Russia by Decision 95/345/EC [5].

For imports originating in Lithuania, the Community-wide proceeding was terminated by Commission Decision 95/344/EC [6] without measures in view of the findings of the investigation concerning the causation of injury. However, the undertaking concerning imports into the United Kingdom originating in Lithuania, accepted in the framework of the regional anti-dumping proceeding, remained in place.

The investigation that led to the imposition of the Community-wide measures is hereinafter referred to as 'the original investigation'. The investigation period of the original investigation was from 1 April 1993 to 31 March 1994.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Council Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 129, 21. 5. 1994, p. 24.
[3] OJ C 158, 9. 6. 1994, p. 3.
[4] OJ L 198, 23. 8. 1995, p. 1.
[5] OJ L 198, 23. 8. 1995, p. 29.
[6] OJ L 198, 23. 8. 1995, p. 27.

2. **Request for a reopening of the investigation**

(3) In April 1997, EFMA lodged a request pursuant to Article 12 of Council Regulation (EC) No 384/96 (hereinafter referred to as 'the basic Regulation') to reopen the investigation into imports of ammonium nitrate originating in Russia with a view to examining whether the measures had had an effect on resale prices or subsequent selling prices.

The request was lodged on behalf of Community producers whose collective output of ammonium nitrate constitutes a major proportion, as defined by Article 5(4) of the basic Regulation, of the total Community production of the product concerned, that is, by the Community industry in the proceeding.

(4) It was alleged that the imposition of anti-dumping duties on imports of ammonium nitrate originating in Russia had led to no movement, or insufficient movement, in resale prices or subsequent selling prices in the Community. The information submitted by the Community industry contained *prima facie* evidence to justify the reopening of the investigation consisting of a comparison of the resale price per tonne which should have been expected following the imposition of measures (calculated by adding to the minimum import price set by Council Regulation (EC) No 2022/95 all costs incurred between import and resale) with actual resale prices per tonne in two Member States (France and the United Kingdom), which were alleged to account for 82 % of the consumption of ammonium nitrate in the Community.

3. **Reopening of the investigation**

(5) The evidence submitted in the request was considered sufficient. On 29 May 1997, therefore, the Commission announced by a notice published in the *Official Jounal of the European Communities* [1] the reopening of the investigation, pursuant to Article 12 of the basic Regulation, concerning the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia and commenced the reinvestigation.

(6) The Commission officially advised the producers/exporters and importers/traders/distributors known to be concerned, the representatives of the exporting country and the Community producers of the reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing. All parties who so requested were granted hearings. Written and oral submissions were also received from certain importers/traders/distributors and from EFMA and certain of its constituent members. Questionnaires were sent by the Commission directly to all producers/exporters and importers/traders/distributors known to be concerned.

(a) *Producers/exporters in the country of origin and their related companies*

No replies to the questionnaire were received within the time limit set. One producer/exporter replied after the expiry of the time limit, but in a manner which could only be considered insufficient. This company was then given the opportunity to rectify the deficiencies in its response, which it failed to do. The company was therefore informed that it would be considered as non-cooperating and was given the opportunity to comment on this Decision, in accordance with Article 18(4) of the basic Regulation. The company replied, outside the deadline, that it had supplied non-confidential information which should be used by the Commission. The non-confidential information already supplied was, however, clearly insufficient for the purposes of the reinvestigation.

(b) *Importers/traders/distributors in the Community*

Nine unrelated importers/traders/distributors made themselves known to the Commission and responded to the questionnaire. Of these, two subsequently did not cooperate and were therefore excluded from the reinvestigation conducted. Both companies were informed of this Decision and were given an opportunity to comment, in accordance with Article 18(4) of the basic Regulation.

The Commission carried out investigation visits at the premises of the following companies:

— Unifert France, SA, France,

— SHM Trading Ltd, United Kingdom,

— ConAgra Resources Europe Ltd, United Kingdom,

— Common Market Fertilisers, SA, Belgium.

[1] OJ C 162, 29. 5. 1997, p. 5.

The three remaining cooperating importers/traders/distributors were not visited by the Commission but appropriate account was taken of the information provided in their replies.

(7) The reinvestigation covered the period from 1 April 1996 to 31 March 1997 (hereinafter referred to as 'the period of reinvestigation').

(8) The investigation exceeded the normal time period of six months provided for in Article 12(4) of the basic Regulation owing to the Commission being hampered in its efforts to gather information by the marked lack of cooperation.

B. PRODUCT UNDER CONSIDERATION

(9) The product reinvestigated is the same product, originating in Russia, as that concerned by the original investigation: i.e. ammonium nitrate, which is a fertiliser produced in prill or granular form, currently classifiable within CN codes 3102 30 90 (ammonium nitrate, other than in aqueous solution) and 3102 40 90 (mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilisers substances with a nitrogen content exceeding 28 % by weight).

C. THE REINVESTIGATION

1. Cooperation

(10) No producer/exporter of ammonium nitrate located in Russia — or related importer/trader/distributor located within or outside the Community — cooperated with the reinvestigation. In addition, as indicated in Recital (11) below, little cooperation was received from unrelated importers/traders/distributors located within or outside the Community.

Recourse was therefore made to facts available in accordance with Article 18 of the basic Regulation. Information received from customs authorities in the United Kingdom, from published trade journals, from cooperating importers/traders/distributors and from the Community industry was used, where appropriate.

(11) Only 20 % of imports into the Community of ammonium nitrate originating in Russia during the period of reinvestigation was accounted for by the purchases of cooperating companies. Furthermore, a number of cooperating companies were related to non-cooperators also involved in the trade of ammonium nitrate orignating in Russia. Despite the fact that this meant the Commission could not be wholly confident as to the completeness of the information supplied, it was nonetheless not disregarded, where relevant, as it was considered that the deficiencies were not such as to cause undue difficulty in arriving at a reasonably accurate finding, in accordance with Article 18(3) of the basic Regulation. In this respect, costs between import and resale verified on-the-spot at cooperating companies considered to have provided the most detailed information were used to calculate the resale price level which could reasonably have been expected for the product concerned after the adoption of measures.

2. Movement of resale prices in the Community

(12) Pursuant to Article 12(1) and (2) of the basic Regulation, it was determined whether, following the imposition of definitive anti-dumping duties in 1995, the expected movement in resale prices in the Community had occurred. In particular, the resale price to the first independent buyer which should have been expected during the period of reinvestigation (the 'benchmark resale price') was compared with the resale price actually found for the same period (the 'actual resale price').

(a) *Calculation of the benchmark resale price*

(13) In order to calculate the benchmark resale price it was considered appropriate to add to the minimum import price established pursuant to the original investigation all costs incurred between import and resale plus an amount for profit.

However, in the absence of any more suitable information, a distinction was made between costs associated with imports accounted for by cooperating importers/traders/distributors — for which the costs incurred between import and resale were verified on-the-spot — and those associated with imports accounted for by non-cooperators — whose costs were estabished on the basis of the facts available, in accordance with Article 18 of the basic Regulation.

(14) In order to calculate the costs incurred between import and resale for cooperating companies, appropriate amounts for customs duty, handling and ancillary costs, selling, general and administrative expenses (including credit costs) and profit were taken into consideration, as verified on-the-spot.

One importer argued, after disclosure of the findings of the reinvestigation, that the profitability used did not reflect actual profitability verified on-the-spot. The rate of profitability used was reviewed and, after consideration, an appropriate adjustment was made.

(15) For non-cooperators, appropriate amounts for customs duty, handling and ancillary costs, product losses, selling, general and administrative expenses (including credit costs) and profit were taken into consideration, taking the highest costs found, by Member State, for cooperating companies. Due account was taken of the fact that imports made into the United Kingdom accounted for by non-cooperating companies were primarily made in bulk, as indicated by evidence provided by customs authorities. In this respect, the costs of bags and bagging were also included in the calculation of costs incurred between import and resale for imports accounted for by non-cooperating companies made into the United Kingdom. The amount for profit was determined on the basis of information contained in the request for a reinvestigation.

(16) Weighted average costs incurred between import and resale and profit were added to the minimum import price established pursuant to the original investigation (established on a cif Community frontier basis duty unpaid) in order to establish the Community benchmark resale price, denominated in ecu, for the period of reinvestigation.

(b) *Actual resale price after the imposition of the measures*

(17) The actual resale price to the first independent buyer for all imports into the Community of ammonium nitrate originating in Russia during the period of reinvestigation was then established. A distinction was made between the actual resale price for imports accounted for by cooperating importers/traders/distributors and that calculated for imports accounted for by non-cooperators.

(18) For imports accounted for by cooperating companies, the actual resale price was calculated on the basis of information verified on-the-spot.

(19) For imports accounted for by non-cooperators, the actual resale price was calculated, on the basis of the facts available, in accordance with Article 18 of the basic Regulation, on a monthly basis for the period of reinvestigation, by reference to market prices published in trade journals, on a Member State by Member State basis. In the absence of any more suitable information, in order not to reward non-cooperation and in view of the fact that the market prices referred to were those for all imported ammonium nitrate whilst, according to information received during the course of the reinvestigation, Russian ammonium nitrate trades at a lower price than other imported ammonium nitrate, the lowest market price published therein was taken.

(20) Finally, a single weighted average actual resale price, denominated in ecu, was calculated for all imports of the product concerned (both made in bulk and bagged) for the period of reinvestigation.

(c) *Insufficient movement of resale prices*

(21) The difference between the actual resale price and the benchmark resale price was then calculated in order to determine whether or not there had been sufficient movement in resale prices following the imposition of anti-dumping measures.

(22) It was found that the imposition of anti-dumping measures had led to insufficient movement in resale prices in the Community. The actual resale price remained below the benchmark resale price on a weighted average basis. This shortfall in price movement is expressed below as a percentage of the weighted average actual resale price: 9,0 %.

In view of the significant shortfall in the movement of resale prices, it was not considered necessary to investigate any further whether the subsequent selling prices in the Community had moved sufficiently.

(d) *Other factors affecting the average resale price of the product after imposition of the anti-dumping duty*

(23) No other arguments were brought forward by interested parties, nor were any other factors found during the reinvestigation, explaining why resale prices as indicated above did not move to the extent that could reasonably be expected after the imposition of the anti-dumping duty.

Certain importers argued that low resale prices reflected the poor condition of the market for ammonium nitrate. Such a situation does not, however, address the issue under consideration which is that, for the period of reinvestigation (i.e. one year), resale prices did not sufficiently reflect costs incurred and profit realised, had the minimum import price been respected.

(e) *Conclusion*

(24) The Council concludes that for ammonium nitrate originating in Russia, the anti-dumping measures have not led to sufficient movement in resale prices in the Community within the meaning of Article 12(2) of the basic Regulation.

3. **Recalculation of the dumping margin**

(25) In accordance with Article 2 of the basic Regulation, a new dumping margin was established, as required by Article 12(2) of that Regulation.

(a) *Normal value*

(26) As no producer/exporter claimed a change in normal value had occurred, as provided for by Article 12(5) of the basic Regulation, the normal value as established in the original investigation for the analogue country, Poland, was used for the recalculation of the dumping margin.

(b) *Reassessed export price*

(27) One export price was calculated for all ammonium nitrate originating in Russia imported into the Community during the period of reinvestigation.

(28) For imports accounted for by cooperating importers/traders/distributors, export prices were calculated, using information verified on-the-spot, on the basis of the price paid or payable by these operators.

(29) In the absence of export prices for imports accounted for by non-cooperators it was decided to construct such prices in accordance with Article 2(9) of the basic Regulation. In this regard, Eurostat import statistics were not considered a reliable basis for establishing such prices in view of the apparent existence of an association or compensatory arrangement. This consideration concurs with evidence provided by customs authorities in the United Kingdom indicating widespread overstatement of export prices by certain non-cooperators. This is also the conclusion drawn from information concerning resale invoices in the hands of the Commission which indicates a price for resale far below that which would allow an importer to carry on normal business, were the minimum import price being respected; in other words, if all costs incurred between import and resale were deducted from the resale invoice price to the first independent buyer, an import price is reached, Community frontier before customs clearance, which is lower than the minimum import price.

Reliable export prices at the Community frontier were therefore constructed on the basis of the price at which the imported product was first resold to an independent buyer, established on the basis of facts available in accordance with Article 18 of the basic Regulation, i.e. the information referred to in Recital (19) above, with adjustments made for all costs incurred between importation and resale, including the anti-dumping duty payable, plus a reasonable amount for profit. The amount for profit was determined on the basis of information contained in the request for a reopening of the reinvestigation, which has been corroborated by other sources.

(30) A weighted average Community frontier export price was then calculated for all imports of ammonium nitrate originating in Russia.

(c) *Comparison*

(31) A fair comparison was made between the normal value as established in the original investigation and the weighted average export price as established above, in accordance with Article 2(10) of the basic Regulation.

(d) *Dumping margin*

(32) The comparison of normal value with reassessed weighted average export prices showed the existence of a higher dumping margin as compared

with that found in the original investigation. The recalculated weighted average dumping margin, expressed as a percentage of the cif price free at the Community frontier, is: 41,9 %.

(e) *Conclusion*

(33) As the reinvestigation has shown that the measures in force have led to insufficient movement in resale prices in the Community and that dumping margins have increased, the measures in force should be amended, in line with the findings on export prices, in accordance with Article 12(3) of the basic Regulation.

4. **Proposed change of the measures applicable**

(34) The measures previously applicable did not have their intended effect upon the resale price of ammonium nitrate originating in Russia, due to absorption of the anti-dumping measures in force. Actual resale prices for the period of reinvestigation did not reflect the costs incurred between the levels of import and resale.

During the course of the reinvestigation it was considered whether it would be appropriate simply to increase the minimum import price to reflect the increased dumping margin.

The very fact, however, that absorption of anti-dumping duties in the form of a minimum import price has taken place also means that any increase in the level of the minimum import price might be equally ineffective in revising resale prices or subsequent selling prices in the Community.

From the foregoing, it can be seen that the flexibility permitted to the Russian producers/exporters by the variable anti-dumping duty hitherto applicable has failed to revise prices for ammonium nitrate originating in Russia to the extent that the injurious effect of the dumping has not been removed.

(35) It is concluded from the finding of the reinvestigation — and taking into account the past history of anti-dumping measures concerning imports of ammonium nitrate originating in Russia, which involved the breach of an undertaking in the first year following its acceptance by the Commission (see Recital (1) above) — that it is also prudent to alter the form of measures in force. In view of the possibility of absorption of an *ad valorem* duty for this seasonal and price-sensitive product, the Council considers it appropriate to amend the definitive anti-dumping duty imposed on imports of ammonium nitrate originating in Russia from the minimum import price currently in force to a specific duty per tonne. This form of anti-dumping measure would be more effective in revising resale prices and thus remedying the injurious effect of the dumping.

One importer argued that the problem of absorption of the anti-dumping duty in force was confined to imports made in bulk and that, therefore, while the specific duty was appropriate for imports made in bulk, the minimum import price should remain in force for imports made in bags. After consideration of the merits of this argument it was not accepted for the reason that the findings of the reinvestigation indicated that absorption of the duties was not confined to those imports made in bulk.

One producer located in Russia, which had at no time prior to disclosure of the findings of the reinvestigation made itself known, proposed an undertaking. After consideration, this proposal was judged to be unacceptable due to the total lack of cooperation from all Russian producers/exporters.

(36) The new level of anti-dumping duty was determined by adding to the previous level of the duty (minimum import price less export price at the Community frontier in the original investigation period) the difference between the export prices in the original investigation and those of the current reinvestigation. The amended duty, to be levied on a per tonne net basis at the Community frontier, is ECU 26,3 per tonne,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Regulation (EC) No 2022/95 is hereby replaced by the following:

'2. The rate of the anti-dumping duty applicable shall be ECU 26,3 per tonne.'

Article 2

This Regulation shall enter into force on the day following that 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.

Done at Brussels, 23 March 1998.

For the Council

The President

M. MEACHER