COUNCIL REGULATION (EC) No 1841/2002

of 14 October 2002

amending Regulation (EC) No 900/2001 imposing definitive anti-dumping duties on imports of urea and ammonium nitrate solutions originating in Poland

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 11(3) thereof,

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

Whereas:

A. EXISTING MEASURES

(1) By Regulation (EC) No 900/2001 [2], the Council imposed a definitive anti-dumping duty on imports of urea and ammonium nitrate solutions (UAN) originating in Poland. That Regulation changed the form of the measure from the minimum import prices imposed originally by Regulation (EC) No 3319/94 into a specific duty of EUR 19 per tonne with regard to Zaklady Azotowe Pulawy SA and EUR 22 per tonne for all other Polish exporting producers.

B. REQUEST FOR A REVIEW

(2) On 28 June 2001, the Polish exporting producer Zaklady Azotowe Pulawy SA (the applicant) lodged a request for an interim review of the anti-dumping measure applicable to it, limited to the aspects of dumping pursuant to Article 11(3) of Regulation (EC) No 384/96 (the basic Regulation). The request provided prima facie evidence that measures were no longer necessary to counteract dumping, and also that this was attributable to lasting changes in circumstances. Notably, the applicant alleged that it had started to sell UAN on the domestic market. It was further alleged that the export sales pattern had changed as the company had stopped selling through its related exporter. The applicant had provided prima facie evidence showing the absence of dumping. Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an interim review, the Commission published a notice in the *Official Journal of the European Communities* [3] and commenced an investigation.

C. PROCEDURE

(3) The investigation of dumping covered the period from 1 October 2000 until 30 September 2001 (the 'investigation period' or 'IP').

(4) The Commission officially advised the authorities of the exporting country of the initiation of the interim review and gave all the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(5) The Commission sent a questionnaire and received detailed information from the applicant.

(6) The Commission sought and verified all information it deemed necessary for the purpose of a determination of dumping and carried out a verification visit at the premises of the exporting producer concerned.

(7) The applicant and the Community industry were informed of the facts and considerations of the investigation and were given an opportunity to comment. Their comments were taken into account and, where appropriate, the findings were modified as reflected above.

D. PRODUCT CONCERNED AND LIKE PRODUCT

(8) The findings of the previous investigation as published in Regulation (EC) No 900/2001 with regard to product concerned and like product were confirmed.

E. DUMPING

1. **Normal value**

(9) It was first determined that the total volume of domestic sales of UAN was representative in relation to export sales. Indeed, the sales volume on the Polish domestic market was higher than the sales volume exported to the Community. It was then determined whether these domestic sales had been made in the ordinary course of trade. In this regard, the investigation showed that the volume of sales above unit production cost represented more than 10 % but less than 80 % of all sales. Therefore, normal value was established on the basis of the prices actually paid for all profitable sales of the product under consideration.

[1] OJ L 56, 6.3.1996, p.1. Regulation as last amended by Council Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 127, 9.5.2001, p. 1.
[3] OJ C 288, 13.10.2001, p. 2.

(10) The Community industry presented a dumping calculation based on a constructed normal value and assumptions regarding costs, prices and adjustments. However, the assumptions were not correct as they were not borne out by the actual confidential data verified in the course of the investigation. Moreover, no indication was found which put into question these verified data.

(11) After final disclosure, the Community industry represented the calculation mentioned under recital 10 together with another calculation incorporating a normal value based on domestic prices this time claiming that the difference between its and the Commission's calculations could only be due to very low gas prices. A comparison between the data submitted by the applicant and verified by the Commission on the one hand and the data used for the dumping calculations submitted by the Community industry showed that the most important differences were not related to the gas price issue. The major differences between these calculations concerned most other cost factors including adjustments, the use factors, and the allocation of gas prices paid in certain periods to UAN sold during the IP, and these differences stemmed from the fact that the interested party used assumed information whereas the Commission's calculation was based on verified data. Since the Community industry was unable to provide sufficient evidence to support the accuracy of its assumptions, the Commission's findings based on verified data are confirmed.

2. **Export price**

(12) Since all export sales of the product concerned were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

3. **Comparison**

(13) For the purposes of a fair comparison by type on an ex-factory basis and at the same level of trade, due allowance was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transport, handling, loading and ancillary costs, credit and commissions in accordance with Article 2(10) of the basic Regulation.

(14) The applicant, having invoiced all export sales to the Community in the IP in US, had asked for an adjustment for currency conversion referring to a sustained revaluation of the Polish Zloty against the USD, which allegedly took place in the period from October 2000 to June 2001.

(15) It was found, however, that while there was an appreciation of the Polish Zloty against the US during most of the IP, the Polish Zloty effectively devalued against the USD during the last four months of the IP. If the adjustment had been applied to the transactions influenced by the upward move of the Zloty, it should also have been applied to the ones effected by its downward move. The company was unable to demonstrate that such adjustments would have any overall effect.

(16) Under these circumstances, the claim for a currency conversion adjustment could not be accepted.

4. **Dumping margin**

(17) It was found that there was a pattern of export prices which differed significantly among different time periods. In particular, it was found that export prices during the last two months of the IP were particularly low. This could not be explained by a similar development of the general price level of UAN. Consequently, a comparison of the normal value and export prices on a weighted average basis did not reflect the full degree of dumping being practised. A transaction-by-transaction comparison on the basis of individual export prices with individual normal values was not possible due to important differences between the transaction dates and the quantities sold of the export transactions on the one hand and the domestic transactions on the other hand. In order to calculate the dumping margin, the weighted average normal value was therefore compared to prices of all individual export transactions to the Community, in accordance with the second subparagraph of Article 2(11) of the basic Regulation.

(18) After final disclosure of the basis on which it was intended to amend the anti-dumping measures in force, the Community industry argued that the dumping margin in the original proceeding had been established on the basis of a comparison of prices of individual export transactions with prices of individual domestic transactions and claimed that such a comparison should be carried out in the current investigation. However, an examination of the original files showed that this method was not used in the original investigation. Indeed this is also evident on a careful reading of Commission Regulation (EC) No 1506/94 of 27 June 1994 imposing provisional duties on imports of urea ammonium nitrate solution originating in Bulgaria and Poland [1], which states that 'the ex-factory export prices of UAN were compared on a transaction-by-transaction basis with the normal value established as described in recitals 12 and 13'. Since those recitals make clear that normal value was constructed on the basis of the producers full, fixed and variable manufacturing cost to which

[1] OJ L 162, 30.6.1994, p.16. Regulation as last amended by Council Regulation (EC) No 2620/94 (OJ L 280, 29.10.1994, p. 1).

an amount for selling general and administrative expenses as well as a reasonable profit margin was added, it is obvious that individual export prices were compared to a weighted average normal value. In any event, as explained above, it was not possible to carry out a transaction-by-transaction comparison of individual export prices with individual normal values due to important differences between the transaction dates and the quantities sold of the export transactions on the one hand and the domestic transactions on the other hand. This argument was therefore rejected.

(19) The comparison, as described in recital 17, showed the existence of *de minimis* dumping for the applicant. The dumping margin established, expressed as a percentage of the total cif value at Community frontier level, duty unpaid, is 0,8 %.

F. LASTING NATURE OF CHANGED CIRCUMSTANCES

(20) In accordance with the Commission's normal practice, it was examined whether the changed circumstances could reasonably be said to be of a lasting nature. It was found that the applicant had significant exports of UAN to non-EC countries during the last two financial periods ending in December 1999 and in June 2001 as well as during the IP. In this context, it should be mentioned that exports to non-EC countries increased substantially during the IP.

(21) It was also found that the applicant has made a significant effort to increase sales on the domestic market by promoting the increased use of liquid fertilisers (UAN), and by developing an extensive distribution network supported by investments in storage facilities at the wholesalers premises. The applicant's domestic sales of urea ammonium nitrate solutions thus increased by 18 % from 2000 and by 35 % from 1999 to the IP.

(22) It should be noted that the farmers' shift to the liquid fertiliser UAN involves investments in equipment used for its spreading. Therefore, it is reasonable to presume that the domestic demand for UAN will be constant or increasing in the foreseeable future.

(23) The increased sales to markets other than the Community, in particular the domestic Polish market, are having a noticeable influence on the overall cost structure. This in turn has an influence on the profitability of UAN sales by the applicant on the domestic market and as a consequence on the normal value.

(24) It is therefore concluded that a return to dumping practices with regard to UAN sales by the applicant in the Community market is rather unlikely.

(25) After final disclosure, the Community industry claimed that the above changes in circumstances could not be regarded as being of a lasting nature in particular, because of the limited size of the domestic market in Poland, the lack of other export markets, and the enormous production capacity of the applicant. However, it was found that the domestic market in Poland, the size of which was in fact largely underestimated by the Community industry, was significant and growing, which in itself reduces the potential threat created by the applicant's production capacity and the assumed resulting dependence on export markets. In addition, it was found that other export markets were easily accessible for the applicant. Therefore, there was no reason to believe the change, i.e. the absence of dumping, would not be of a lasting nature.

G. CONCLUSION

(26) In view of the finding of a *de minimis* dumping margin for the applicant and as this situation is not considered to be of a short-term nature, the specific anti-dumping duty imposed by Regulation (EC) No 900/2001 on exports of the applicant should be replaced by a EUR 0 duty amount.

(27) The amendment of the measures concerns only the applicant and not Poland as a whole. The applicant remains subject to the proceeding and may be reinvestigated in any subsequent review carried out for Poland pursuant to Article 11 of the basic Regulation. All other producers in Poland remain subject to the existing residual rate of duty, although it is open to them and other interested parties to request a review of these measures in accordance with Article 11 of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Regulation (EC) No 900/2001 shall be replaced by the following:

'2. The amount of the applicable duty per tonne of product shall be as shown below for the products manufactured by the following companies:

Country	Company	Amount of duty (EUR per tonne)	TARIC additional code
Poland	Zaklady Azotowe Pulawy SA Al. Tysiaclecia P.P. 13, 24-110 Pulawy Poland	0	8795
	Other companies	22	8900'

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 Luxembourg, 14 October 2002.

For the Council
The President
L. ESPERSEN