COUNCIL REGULATION (EC) No 662/2008

of 8 July 2008

amending Regulation (EC) No 442/2007 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

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] ('the basic Regulation'), and in particular Article 8 thereof,

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

Whereas:

A. PROCEDURE

(1) On 22 January 2001 the Council imposed, by Regulation (EC) No 132/2001 of 22 January 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ammonium nitrate originating in Poland and Ukraine, and terminating the anti-dumping proceeding in respect of imports originating in Lithuania [2], a definitive anti-dumping duty of EUR 33,25 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating, *inter alia*, in Ukraine. Following an expiry review initiated in January 2006, the Council, by Regulation (EC) No 442/2007 [3], renewed these measures at their current level for two years.

(2) On 19 December 2006, the Commission announced, by a notice published in the *Official Journal of the European Union* [4], the initiation of a partial interim review concerning imports into the Community of ammonium nitrate originating in Ukraine upon the request of Open Joint Stock Company (OJSC) Azot Cherkassy (hereinafter 'the exporting producer'). The definitive findings and conclusions of the partial interim review are set out in Regulation (EC) No 237/2008 [5], which terminated the review without amending the anti-dumping measures in force.

B. UNDERTAKING

(3) During the interim review the exporting producer expressed an interest in offering a price undertaking but failed to submit a duly substantiated offer within the deadline in accordance with Article 8(2) of the basic Regulation. However, as stated in recitals (46) and (47) of Regulation (EC) No 237/2008, the Council considered that the exporting producer should exceptionally be allowed to complete its undertaking offer within 10 calendar days from entry into force of that Regulation due to the complexity of several issues, namely: (1) the price volatility of the product concerned, which would require some form of indexation of minimum prices, while at the same time the volatility is not sufficiently explained by the key cost driver; and (2) the particular market situation for the product concerned. After the publication of Regulation (EC) No 237/2008 and within the deadline as set out in that Regulation, the exporting producer submitted an acceptable price undertaking in accordance with Article 8(1) of the basic Regulation.

(4) The Commission, by Decision 2008/577/EC [6], accepted the undertaking offer. The Council recognises that the undertaking offer eliminates the injurious effect of dumping and limits to a sufficient degree the risk of circumvention.

(5) To further enable the Commission and the customs authorities effectively to monitor the compliance of the company with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on (i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in the Annex; (ii) the imported goods having been manufactured, shipped and invoiced directly by the exporting producer to the first independent customer in the Community; and (iii) the goods declared and presented to customs corresponding precisely to the description on the undertaking invoice. Where the above conditions are not met, the appropriate anti-dumping duty shall be incurred at the time of acceptance of the declaration for release into free circulation.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 23, 25.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 945/2005 (OJ L 160, 23.6.2005, p. 1).
[3] OJ L 106, 24.4.2007, p. 1.
[4] OJ C 311, 19.12.2006, p. 57.
[5] OJ L 75, 18.3.2008. p. 8.
[6] See page 43 of this Official Journal.

(6) Whenever, pursuant to Article 8(9) of the basic Regulation, the Commission withdraws its acceptance of an undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation of these transactions.

(7) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals (5) and (6), even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

(8) Pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.

(9) For the reasons stated above, the undertaking offered by the exporting producer is therefore considered acceptable by the Commission, and the exporting producer concerned has been informed of the essential facts, considerations and obligations upon which acceptance is based.

(10) In the event of a breach or withdrawal of the undertaking or in case of withdrawal of acceptance of the undertaking by the Commission, the anti-dumping duty which has been imposed by the Council in accordance with Article 9(4) shall automatically apply pursuant to Article 8(9) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 442/2007 is hereby amended as follows:

1. the following Article shall be inserted after Article 1:

'*Article 1*bis

1. Notwithstanding Article 1, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with the subsequent paragraphs of this Article.

2. Imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight originating in Ukraine, 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 91 for release into free circulation which are invoiced by the exporting producer from which undertaking is accepted by the Commission and whose name is listed in the Commission Decision 2008/577/EC [1], as from time to time amended, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the exporting producer to the first independent customer in the Community, and

— such imports are accompanied by an undertaking invoice, which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex to this Regulation, and

— the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

3. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

— whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled, or

— when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices invalid.

[1] OJ L 185, 12.7.2008, p. 43.'

2. the following Annex shall be added:

'*ANNEX*

The following elements shall be indicated in the commercial invoice accompanying the company's sales to the Community of goods which are subject to the undertaking:

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".

2. The name of the company 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:

   — the CN code used for the purpose of the undertaking,

   — the nitrogen ("N") content of the product (in percentages),

   — the TARIC code,

   — the quantity (to be given in tonnes).

7. The description of the terms of the sale, including:

   — the 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 commercial 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 Decision 2008/577/EC. I declare that the information provided in this invoice is complete and correct.".'

Article 2

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

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

Done at Brussels, 8 July 2008.

For the Council
The President
C. LAGARDE