COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia

(presented by the Commission)

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of ammonium nitrate originating in Russia.

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

The measures currently in force are imposed by Council Regulation (EC) No 658/2002, as last amended by Council Regulation (EC) No 945/2005 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia.

Consistency with the other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 19 December 2006, the Commission initiated an interim review of the measures in

force in respect of imports of ammonium nitrate originating in Russia further to a request made by one exporting producer in Russia, namely OJSC Acron and OJSC Dorogobuzh. The request was based on prima facie evidence that the circumstances on the basis of which measures were established have changed and therefore the continued imposition of measures at the existing levels would no longer be necessary to offset dumping.

The attached proposal for a Council Regulation is based on the findings of the investigation carried out which is limited in scope to the examination of dumping as far as the applicant is concerned.

The investigation showed that dumping took place during the investigation period. The level of the dumping found was higher than the one during the investigation period which led to the imposition of the definitive duties. It was also higher than the injury elimination level which formed the basis of the current measures in force. Therefore no circumstances have changed in such a way as to no longer render necessary the existing measures to offset dumping. It was also found that the circumstances during the current investigation period were of a lasting nature.

It is therefore proposed that the Council adopt the attached proposal for a Regulation that would terminate the review without amending the anti-dumping measures currently in force, which should be published in the Official Journal no later than 18 March 2008.

Legal basis

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instruments: regulation.

Other means would not be adequate for the following reason: The above-mentioned

basic Regulation does not foresee alternative options.

BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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Proposal for a

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terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the 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] ('the basic Regulation'), and in particular Article 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 658/2002[2], as last amended by Council Regulation (EC) No 945/2005[3]on imports of ammonium nitrate originating in Russia.

2. Request for review

(2) The Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation.

(3) The request was lodged by two related exporting producers in Russia, belonging to the 'Acron' Holding Company, namely OJSC Acron and OJSC Dorogobuzh. These two companies, due to their relationship are treated as one legal entity for the purpose of the present investigation ('the applicant'). The request is limited in scope to the examination of dumping as far as the applicant is concerned.

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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 102, 18.4.2002, p. 1.

3 OJ L 160, 23.6.2005, p. 1.

(4) The applicant alleged and provided sufficient *prima facie* evidence that the circumstances on the basis of which measures were established have changed and that these changes are of lasting nature. The applicant provided *prima facie* evidence showing that a comparison between its own costs of ammonium nitrate and its export prices to the Community would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of measures at the existing levels, which were based on the level of dumping previously established, would no longer be necessary to offset dumping.

3. Initiation

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission, on 19 December 2006, by a notice published in the *Official Journal of the European Union*[4], initiated a partial interim review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia pursuant to Article 11(3) of the basic Regulation.

(6) This review was limited in scope to dumping, with the objective of assessing the need for the continuation, removal or amendment of the existing measures in respect of the applicant.

4. Investigation

(7) The investigation of dumping covered the period from 1 October 2005 to 30 September 2006 ('review investigation period' or 'RIP').

(8) The Commission officially advised the applicant, as well as the representatives of the exporting country and the Community industry of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

(9) All interested parties, who requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(10) A questionnaire was sent to the applicant and its related sales companies on the Russian domestic market. The applicant as well as two of the related sales companies submitted full questionnaire replies.

(11) The Commission sought and verified all information deemed necessary for the determination of dumping. Verification visits were carried out at the premises of the following companies:

(a) The exporting producers:

– OJSC Acron

– OJSC Dorogobuzh

[4] OJ C 311, 19.12.2006, p. 55.

(b) The related sales companies

– JSC Rostragronova

– JSC Kubanagronova

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(12) The product under review is the same as in the investigations mentioned in recital (1), i.e. solid fertilizers with an ammonium nitrate content exceeding 80 % by weight originating in Russia ('the product concerned'), currently classifiable 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.

2. Like product

(13) As established in the previous investigations and confirmed in this investigation, the product concerned and the products manufactured and sold by the applicant on the Russian domestic market were found to have the same basic physical and chemical characteristics and essentially the same uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to the determination of dumping as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

C. RESULTS OF THE INVESTIGATION

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

1. Normal value

(15) In order to establish the normal value, it was first verified that the total domestic sales of the applicant were representative in accordance with Article 2(2) of the basic Regulation. Domestic sales of the applicant were found to be representative when compared to its export sales as they represented more than 5% of its total export sales volume to the Community.

(16) The Commission subsequently examined whether the domestic sales could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. To this end, the cost of production of the product produced and sold by the applicant on the domestic market was examined.

(17) Gas is a main raw material component in the manufacturing process of the product concerned and represents a significant proportion of the total cost of production. In accordance with Article 2(5) of the basic Regulation, it was examined whether the costs associated with the production and sales of the product under consideration were reasonably reflected in the records of the parties concerned.

(18) It was established on the basis of data published by internationally recognised sources specialised in energy markets, that the prices paid by the applicant were abnormally low. By way of illustration, they amounted to one fifth of the export price of natural gas from Russia and were also significantly lower than the gas price paid by the Community producers. In this regard, all available data indicate that domestic gas prices in Russia were regulated prices which are far below market prices paid in unregulated markets for natural gas.

(19) Since gas costs were not reasonably reflected in the applicant's records, they had to be adjusted accordingly. In the absence of any undistorted gas prices relating to the Russian domestic market, and in accordance with Article 2(5) of the basic Regulation, gas prices had to be established on 'any other reasonable basis, including information from other representative markets'. The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs and adjusted to reflect local distribution costs. Waidhaus being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be considered a representative market.

(20) Following disclosure, the applicant claimed that any adjustment of its gas price paid on the domestic market would be unwarranted because the accounting records of the company fully reflected the costs associated with the activity of production and sales of the like product in the country of origin.

(21) However, when examining cost of production of the like product under Article 2(5) of the basic Regulation, it must be determined whether the costs as booked in the company's accounts are *reasonably* reflecting the costs associated with the production and sale of the product under investigation. For the reasons set out above in recital (18), this was found not to be the case. The applicant did not address the apparent significant difference between the price for gas paid on the Russian domestic market and the export price of natural gas from Russia on the one hand and the one paid by the Community producers on the other hand. It did also not address the fact that domestic prices for natural gas were regulated in Russia and could not be considered to reasonably reflect a price normally payable in undistorted markets. Finally, the applicant did not explain why despite the reasons set out in recital (18), the cost of gas used for the production of the like product sold on the domestic market would be reasonably reflected in its records. This claim therefore had to be rejected.

(22) The applicant further claimed that by making a gas adjustment, *de facto* a methodology to determine normal value was used which is not foreseen by the basic Regulation. Thus, by replacing domestic gas costs by costs calculated as described above in recital (19), and due to the fact that these costs constitute major part of the total costs of the like product and therefore also of the constructed normal value, the normal value would be *de facto* determined by data from a third "representative" market. In this regard, the applicant argued that for market economy countries, the basic Regulation foresees, however, only the following methodologies to determine the normal value: (i) on the basis of the domestic price of the like product in the ordinary cause of trade, or alternatively, in case sales are not made in the ordinary course of trade, (ii) on the basis of the cost of production in the country of origin (plus a reasonable amount for selling, general and administrative costs ("SG&A") and for profits) or (iii) representative export prices of the like product to an appropriate third

country. The applicant concluded that on this basis normal value should not be based on data from a third representative market.

(23) In this regard and as also outlined below in recitals (45) to (48), it should first be noted that normal value was established in accordance with the methodologies outlined in Article 2(1) to (6) of the basic Regulation. However, in order to establish whether domestic sales were made in the ordinary course of trade by reason of price, i.e. whether they were profitable, it must first be established whether the costs of the applicant were a reliable basis within the meaning of Article 2(5) of the basic Regulation. Only after costs have been reliably established, it can be determined which methodology to establish normal value should be used. It is therefore wrong to claim that by determining reliable costs in accordance with Article 2(5) of the basic Regulation a new methodology to determine normal value was introduced.

(24) The applicant moreover argued that when adjusting cost in accordance with Article 2(5) of the basic Regulation, the level of the adjusted costs cannot exceed the level of the respective costs in the exporting country. Otherwise, the methodology used when adjusting cost would be in breach of Article 2(3) of the basic Regulation which stipulates that normal value of the like product shall be calculated on the basis of the costs of production *in the country of origin*.

(25) The cost adjustment was done in accordance with Article 2(5) of the basic Regulation. Article 2(5) of the basic Regulation does not refer to the "cost of production in the country of origin", but explicitly entitles the Institutions to use the cost of production coming "from other representative market" in other countries than the country of origin. The applicant's argument therefore had to be rejected

(26) Finally, the findings set out above in recitals (18) and (19) are also not in contrast to Article 1 of the basic Regulation, as claimed by the applicant. Indeed, although Article 1 of the basic Regulation indicates that normal value should be established by reference to data from the country of export, the basic Regulation makes also clear that this rule is subject to exceptions.

(27) The applicant's arguments in this respect had therefore to be rejected.

(28) The applicant further claimed that if an adjustment were to be made to its cost of natural gas on the domestic market, such adjustment should be based on either the (i) non-regulated gas prices available in Russia or, (ii) the average export price of Russian natural gas to the Baltic countries, or alternatively (iii) on the basis of the actual cost of production of natural gas in Russia plus a reasonable profit margin.

(29) Firstly, the fact that the Commission could have chosen a different basis does not render the choice of Waidhaus unreasonable. The primary criterion for the choice of the basis on which to establish the gas prices is that it reasonably reflects a price normally payable in undistorted markets.. It is undisputed that this condition is met with respect to the prices at Waidhaus. Secondly, the fact that the volume of gas sold at non-regulated prices in the domestic market was only minor during the RIP and that such prices were significantly closer to the regulated domestic price than to the freely-determined export price strongly suggests that these non-regulated prices were distorted by the prevailing regulated prices. Therefore, the unregulated domestic prices could not be used. It was also considered that Russian export prices of gas to the Baltic

States were not sufficiently representative, due to the relatively low export volumes to these countries. Furthermore, necessary data concerning transportation and distribution cost were not available and therefore, reliable prices to the Baltic States could not be established. Indeed, by far the greatest volume of gas is exported via the Waidhaus hub which represents therefore an appropriate basis for an adjustment. The Applicant did not provide any evidence regarding the existence of representative markets, other than the Waidhaus hub, where prices reasonably reflect a price normally payable in undistorted markets. Consequently, these arguments were rejected.

(30) In this context, the applicant also claimed that it purchased approximately 50% of the natural gas consumed in its production of fertilisers on the non-regulated market in Russia. The applicant claimed it would therefore be discriminatory to adjust its gas costs while no such adjustments would be made for other exporters with higher cost levels similar to those of the applicant. It should be noted that according to the verified questionnaire reply, the applicant's purchases of natural gas on the un-regulated market in Russia were marginal during the RIP. This claim had therefore to be rejected.

(31) As far as the third alternative mentioned under (iii) in recital (28) above is concerned, i.e. to base the adjustment on the actual cost of production of natural gas in Russia, it should first be noted that such alternative is not, as claimed by the applicant, expressively foreseen in Article 2(5) of the basic Regulation. Furthermore, as mentioned in recital (29), the primary criterion for the choice of the basis on which to establish the gas prices is that it reasonably reflects a price normally payable in undistorted markets. Thus, whether the price of gas charged by the supplier to the customers is made at a profit as such is irrelevant in this context. This argument had therefore to be rejected.

(32) The applicant furthermore argued that domestic prices for natural gas in Russia regulated by the State are increasing constantly and reaching levels covering the cost of production of gas. Therefore, the price on the domestic market cannot be considered as uncompetitive or unreasonably low.

(33) This argument has no grounds since the correct standard for choosing a representative market is not whether prices are profitable as such but whether prices reasonably reflect a price normally payable in undistorted markets, as explained in recital (29) above. This is not the case for prices regulated by the State. Furthermore, this argument also contradicts public statements of the Russian gas supplier (as confirmed by its published audited accounts) that the Russian domestic gas prices do not cover production, transportation and sales cost. Therefore, this argument was rejected.

(34) As regards the calculation method of the gas price at Waidhaus as such, the applicant claimed that the Russian export duty payable for all exports should have been deducted from the Waidhaus price, because the export duty is not incurred domestically.

(35) Indeed the market price at Waidhaus, which was considered as representative market within the meaning of Article 2(5) of the basic Regulation, is the price after export taxes and not the prices before these taxes. From the perspective of the buyer it is the price it has to pay at Waidhaus which is relevant, and in this regard it is irrelevant what percentage of that price constitutes an export tax and what percentage is paid to the gas supplier. The latter, on the other hand will always try to maximise its price and

therefore charge the highest price its customers are willing to pay. Given that this price is always well above its costs of production, allowing the gas supplier to make huge profits, its price setting is not primarily influenced by the amount of the export tax but by what price its customers are willing to pay. It was therefore concluded that the price including the export tax, and not the price before that tax, is the undistorted market driven price. Consequently, the arguments of the applicant in this regard were rejected.

(36) The applicant further claimed that the price at Waidhaus should have been adjusted for quality, availability, marketability, transportation and other conditions of sale which would be different in the export and the domestic market of natural gas. It should first be noted that the price of Waidhaus was indeed adjusted by different transportation cost for the export and the domestic market and that the applicant's claim in this regard was not warranted and had to be rejected. As far as the other elements are concerned the applicant did not provide any further information or any supporting evidence. In particular, the applicant did not show, nor was there any other information available, that there were differences in quality, availability, marketability and other conditions of sales which would have justified further adjustments, nor did the applicant attempt to quantify these alleged differences.

(37) In this context, the applicant further argued that no adjustments for natural comparative advantages have been made to the price at Waidhaus. In this regard, it was claimed that since gas is largely available in Russia but not in the Community, prices in Russia would be naturally lower than the price of the exported gas. Furthermore, it was alleged that the export capacity would be limited by the limits of the existing gas transportation system which would increase export prices of Russia. The applicant also argued that the "abnormal high profits" of the Russian gas supplier on the export market should be deducted from the Waidhaus price used.

(38) As mentioned in recital (29) above, the primary criterion for the choice of Waidhaus prices as basis on which to establish the gas prices is that they reasonably reflect a price normally payable in undistorted markets. . The market conditions prevailing in the domestic market are irrelevant in this context. Therefore these arguments had to be rejected.

(39) The applicant also objected that the mark-up of the local distributors has been added to the adjusted gas price, claiming that profits of distributors would already be included in the price at Waidhaus. In this regard, the applicant claimed that the local distributors in Russia were fully owned subsidiaries of the gas supplier and therefore addition of the profit of these distributors could constitute double counting.

(40) It is first noted that the mark-up of local distributors do not only include the profit margin of these companies but also their costs between purchase and re-sale of the natural gas.

(41) Secondly, this argument could not be sufficiently verified anymore. This is due to the fact that the gas supplier in Russia and its affiliations were not subject to the present investigation and that therefore there was insufficient information of the organisation and its cost structure available. It is also noted that the situation in Russia in this regard due to, *inter alia*, the close links between the gas supplier and the Russian government is not sufficiently transparent to allow sufficient access to the necessary evidence.

(42) Moreover, the applicant, who has the burden of proof, was not able to submit any further information or evidence which showed whether and in what extent distribution costs were indeed included in the Waidhaus price. However, since domestic customers were purchasing the gas from local suppliers, it had to be assumed that they would have to pay local distribution costs which are not as such included in the unadjusted Waidhaus price. Therefore, at this stage of the proceeding it had to be considered that this adjustment was warranted and consequently the argument was rejected.

(43) However, the Community Institutions also considered that the impact on the calculation of the dumping margin of this specific adjustment may be significant. Therefore, given the particular situation described above in recital (41), it was considered that if the applicant supplies sufficient verifiable evidence, the Commission may consider the re-opening of the investigation in this regard..

(44) The applicant also made allegations about non-competitive domestic pricing on gas in Germany. It is noted that ongoing investigations by German antitrust authorities concern prices at which German main gas distributors sell the gas on the domestic market, and therefore it is not linked at al to the price at which Russian exported gas is sold at Waidhaus.

(45) After adjusting the cost of manufacturing as described above, no domestic sales were made in the ordinary course of trade pursuant of Article 2(4) of the basic Regulation.

(46) It was therefore considered that domestic prices did not provide an appropriate basis for the establishment of the normal value and another method had to be applied. In accordance with Article 2(3) and (6) of the basic Regulation, normal value was constructed by adding to the exporter's manufacturing costs of the product concerned, adjusted where necessary as mentioned in recital (19) above, a reasonable amount for SG&A and a reasonable amount for profit.

(47) SG&A costs and profit could not be established on the basis of the chapeau of Article 2(6) of the basic Regulation because the applicant did not have representative domestic sales of the product concerned in the ordinary course of trade. Article 2(6)(a) of the basic Regulation could not be applied, since there is only one producer subject to the investigation. Article 2(6)(b) was not applicable either, since the manufacturing cost of the applicant for products belonging to the same general category of goods would also need to be adjusted in respect of gas costs, for the reasons indicated in recital (18) above. Therefore, SG&A costs and profit were established pursuant to Article 2(6)(c) of the basic Regulation.

(48) In accordance with Article 2(6)(c) of the basic Regulation, the SG&A costs were based on a reasonable method. The North American market showed a significant volume of domestic sales and a considerable level of competition from both domestic and foreign companies. In this respect, consideration was given to publicly available information relating to major companies operating in the fertilizers business sector. It was found that the corresponding data from North American (USA and Canadian) producers would be the most appropriate for the purpose of the investigation, given the large availability of reliable and complete public financial information from listed companies in this region of the world. Therefore, SG&A costs and profit were established on the basis of the weighted average SG&A costs and profit from three North American producers, which were found to be amongst the largest companies in

the nitrogen fertilizers' sector, with regard to their domestic sales of the same general category of products (nitrogen fertilizers). These three producers were considered to be representative of the nitrogen fertilizers' business and their SG&A costs and profit thereby representative of those normally incurred by companies operating successfully in that business segment. It should be noted that there were no indications that the amount for profit so established would exceed the profit realized by other Russian producers on sales of products of the same general category on their domestic market.

(49) The Community industry objected to the above approach with regard to the determination of the SG&A and claimed the applicant's own SG&A should have been used. However, Article 2(6) of the basic Regulation sets out that the amounts for SG&A shall only be based on actual data pertaining to the production and sales of the exporting producer concerned, when these sales were made in the ordinary course of trade. As outlined in recitals (45) and (46), this was not the case and this argument therefore had to be rejected.

2. Export price

(50) In accordance with Article 2(8) of the basic Regulation, the export price was established on the basis of the price actually paid or payable for the product concerned when sold for export to the Community.

3. Comparison

(51) The normal value and the export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between normal values and export prices, due allowance in the form of adjustments was made for differences affecting price and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport, credit, packing and bank charges were granted when reasonable, accurate and supported by verified evidence.

4. Dumping margin

(52) The dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.

(53) The investigation showed that dumping took place during the RIP. The dumping margin expressed as a percentage of the CIF Community frontier price, duty unpaid, is 42,06%.

5. Lasting nature of the circumstances prevailing during the IP

(54) In accordance with Article 11(3) of the basic Regulation, an analysis was made as to whether the change in circumstances with regard to dumping could reasonably be said to be of a lasting nature.

(55) In this regard, it should be noted that normal value in the original investigation was established on the basis of profitable sales prices in the USA domestic market, since Russia was not a market economy country at that time. In the context of the current review investigation, Russia is considered a market economy country, and the normal value has therefore been established on the basis of the applicant’s own cost of

production, adjusted where necessary. No indications could be found that the normal value established during the present review could not be considered to be of a lasting nature.

(56) No evidence was found that export sales would not continue to be made at the current price level.

(57) On this basis, it is concluded that the changed circumstances with respect to the original investigation regarding dumping (now based on the comparison of the own normal value and export prices of the applicant) could reasonably be considered to be of a lasting nature.

D. TERMINATION OF THE REVIEW

(58) Since, in the original investigation the duty was imposed in the form of a specific amount per tonne, it should have the same form in the current investigation. The duty calculated on the basis of the current margin of dumping would be EUR 48,09/ton.

(59) It is recalled that, as outlined in recital (94) of Council Regulation (EC) No 658/2002, when imposing definitive measures in 2002, the injury margin was used when determining the amount of the definitive duty to be imposed in accordance with the lesser duty rule. As defined by Article 1(2) of Regulation (EC) 658/2002, the duty currently in force is depending on the specific product type and varies between EUR 41,42/ton and EUR 47,07/ton.

(60) Since the duty established on the basis of the current margin of dumping is higher than the current duty, the review should be terminated without amending the level of the duty applicable to the applicant, which should be maintained at the level of the definitive anti-dumping duty rate established in the original investigation.

E. UNDERTAKING

(61) The applicant expressed an interest in offering an undertaking but failed to submit a sufficiently substantiated undertaking offers within the deadlines set in Article 8(2) of the basic Regulation. Consequently no undertaking offer could be accepted by the Commission. However, it is considered that the complexity of several issues, namely (1) the volatility of the price 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 (*inter alia,* that there are limited imports from the exporter subject to this review) point to the need to further consider whether an undertaking combining an indexed minimum price and a quantitative ceiling would be workable.

(62) As mentioned above, due to this complexity the applicant could not formulate an acceptable undertaking offer within the statutory deadline. In view of the above, the Council considers that the applicant should exceptionally be allowed to complete its undertaking offer beyond the above-mentioned deadline but within 10 calendar days from entry into force of this regulation.

F. DISCLOSURE

(63) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present review and to maintain the existing anti-dumping duty on imports of the product concerned produced by the applicant. All parties were given an opportunity to comment. Their comments were taken into account where warranted and substantiated by evidence.

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review of the anti-dumping measures applicable to imports of solid fertilisers with an ammonium nitrate content exceeding 80% by weight falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 31 05 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91 and originating in Russia, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated without amending the anti-dumping measures in force.

This Regulation shall enter into force on the day following that of 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, […]

For the Council
The President
[…]