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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.9.2009  
COM(2009) 493 final

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC) No 661/2008, imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia**

## EXPLANATORY MEMORANDUM

### 1) 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 from, *inter alia*, Russia.

- **General context**

This proposal is made in the context of the implementation of a judgment of the Court of First Instance of the European Communities on the validity of a Council Regulation adopted according to the basic Regulation and which was the result of an investigation carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 661/2008<sup>1</sup> of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96.

- **Consistency with other policies and objectives of the Union**

Not applicable.

### 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

There was no need for consultation of interested parties.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

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<sup>1</sup> OJ L 185, 8.7.2008, p.1.

This proposal is the result of the implementation of the judgement of the Court of First Instance of the European Communities in case T-348/05 and 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.

### **3) LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

By Regulation (EC) No 658/2002 the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Following a request by the complainant, a product scope interim review was carried out which led to an amendment by way of Council Regulation (EC) No 945/2005 imposing definitive anti-dumping duties on imports of solid fertilisers originating in Russia with an ammonium nitrate content exceeding 80 % by weight ('AN'). Finally, following a request for an expiry review pursuant to Articles 11(2) of the basic Regulation, the Council, by Regulation (EC) No 661/2008, imposed anti-dumping duties on the imports of ammonium nitrate originating in Russia for a further period of five years.

On 14 September 2005, the exporter JSC Kirovo-Chepetsky Khimichesky Kombinat applied before the Court of First Instance for the annulment of Council Regulation (EC) No 945/2005, which extended the scope of the measures. The applicant maintained that the Council could not extend the measures to a product which is different to the product concerned.

On 10 September 2008, in case T-348/05, the Court of First Instance of the European Communities annulled Regulation (EC) No 945/2005.

In view of the above, the anti-dumping duties that have been paid on imports from JSC Kirovo-Chepetsky Khimichesky Kombinat to the European Community of ammonium nitrate pursuant to Council Regulation (EC) No 945/2005 and to Council Regulation (EC) No 661/2008, in both cases with the exception of those levied on import of products falling within CN codes 3102 30 90 and 3102 40 90 which formed the original product scope, should be repealed.

It is therefore proposed that the Council adopts the attached proposal for a Regulation, which should be published in the *Official Journal of the European Union* at the earliest convenience.

- **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 and in particular article 11 (4) thereof.

- **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 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: Council Regulation.

Other means would not be adequate because the matter is the modification of a Council Regulation.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

Proposal for a

## COUNCIL REGULATION

### **amending Regulation (EC) No 661/2008, 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<sup>2</sup> (the 'basic Regulation') and in particular Article 9 paragraph 4 thereof,

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

Whereas:

#### **A. PREVIOUS PROCEDURE**

- (1) By Regulation (EC) No 658/2002<sup>3</sup>, the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Based on a request from the Community industry a product scope interim review was subsequently carried out and, by Council Regulation (EC) No 945/2005<sup>4</sup>, definitive anti-dumping duties were imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight ('AN'), currently 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 and originating in Russia.
- (2) Following a request for an expiry review pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 661/2008<sup>5</sup>, confirmed the anti-dumping duties on the imports of ammonium nitrate originating in Russia.

#### **B. PROCEEDING BEFORE THE COURT OF FIRST INSTANCE**

- (3) On 14 September 2005, JSC Kirovo-Chepetsky Khimichesky Kombinat, a company incorporated under Russian law, lodged an application at the Court Registry for the annulment of the Council Regulation (EC) No 945/2005.

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<sup>2</sup> OJ L 56, 6.3.1996, p. 1.

<sup>3</sup> OJ L 102, 18.4.2002, p.1.

<sup>4</sup> OJ L 160, 23.6.2005, p.1.

<sup>5</sup> OJ L 185, 8.7.2008, p.1.

- (4) On 10 September 2008, in case T-348/05, the Court of First Instance of the European Communities annulled Council Regulation (EC) No 945/2005 of 21 June 2005.

### C. AMENDMENT OF THE MEASURES

- (5) In view of the above findings, the anti-dumping measures applicable to imports originating in Russia of ammonium nitrate, other than those falling within CN codes 3102 30 90 and 3102 40 90 manufactured and exported by JSC Kirovo-Chepetsky Khimichesky Kombinat should be repealed with retroactive effect to the date of entry into force of Council Regulation (EC) No 661/2008.
- (6) Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. Subparagraph (b) of Article 2(2) of Council Regulation (EC) No 661/2008 shall be renumbered to (c).

2. The following shall be inserted into Article 2(2) of Council Regulation (EC) No 661/2008 after subparagraph (a)

"(b) For goods produced by JSC Kirovo-Chepetsky Khimichesky Kombinat (TARIC additional code A959):

| Product description   | CN code    | TARIC code | Fixed amount of duty (EUR per tonne) |
|---|------------|------------|--------------------------------------|
| - Ammonium nitrate other than in aqueous solutions  | 3102 30 90 | -          | 47,07                                |
| - Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances with a nitrogen content exceeding 28% by weight | 3102 40 90 | -          | 47,07                                |

For goods mentioned in Article 2(1) produced by JSC Kirovo-Chepetsky Khimichesky Kombinat and which are not mentioned in the table above, no anti-dumping duty shall apply."

#### *Article 2*

The definitive anti-dumping duties paid on imports from JSC Kirovo-Chepetsky Khimichesky Kombinat to the European Community of the product concerned pursuant to Council Regulation (EC) No 661/2008, with the exception of those levied on import of products falling within CN codes 3102 30 90 and 3102 40 90, shall be repaid or remitted. The repayment or remission shall be requested from national customs authorities in accordance with applicable customs legislation.

*Article 3*

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

Article 1 shall apply from 13 July 2008.

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

Done at Brussels, [...]

*For the Council  
The President  
[...]*