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COMMISSION DECISION

of 4 July 2008

accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Ukraine

(2008/577/EC)

(OJ L 185, 12.7.2008, p. 43)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Commission Decision 2012/629/EU of 10 October 2012	L 277	8	11.10.2012

Corrected by:

► **C1** Corrigendum, OJ L 339, 22.12.2009, p. 59 (2008/577/EC)

**COMMISSION DECISION****of 4 July 2008****accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Ukraine**

(2008/577/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) By Regulation (EC) No 2022/95 ⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (the product concerned). Pursuant to a further investigation, which established that the duty was being absorbed, the measures were amended by Council Regulation (EC) No 663/98 ⁽³⁾. Following a request for an expiry and an interim review pursuant to Articles 11(2) and 11(3) of the basic Regulation, the Council imposed by Regulation (EC) No 658/2002 ⁽⁴⁾ a definitive anti-dumping duty of EUR 47,07 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia.
- (2) By Regulation (EC) No 132/2001 ⁽⁵⁾, the Council imposed a definitive anti-dumping duty of EUR 33,25 per tonne on imports of the product concerned originating in Ukraine. Following an expiry review initiated in January 2006, the Council, by Regulation (EC) No 442/2007 ⁽⁶⁾, renewed these measures at their current level for two years.

⁽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 198, 23.8.1995, p. 1. Regulation as amended by Regulation (EC) No 663/98 (OJ L 93, 26.3.1998, p. 1).

⁽³⁾ OJ L 93, 26.3.1998, p. 1.

⁽⁴⁾ OJ L 102, 18.4.2002, p. 1. Regulation as last amended by Regulation (EC) No 945/2005 (OJ L 160, 23.6.2005, p. 1).

⁽⁵⁾ OJ L 23, 25.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 945/2005.

⁽⁶⁾ OJ L 106, 24.4.2007, p. 1.

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- (3) By Regulation (EC) No 993/2004 ⁽¹⁾, the Council provided for the exemption from the anti-dumping duties of imports into the new Member States that acceded to the European Union on 1 May 2004 (the EU-10) made under the terms of special undertakings (enlargement undertakings), and authorised the Commission to accept those enlargement undertakings. On this basis, the Commission, by Regulation (EC) No 1001/2004 ⁽²⁾, accepted three enlargement undertakings offered by the Russian exporting producers Open Joint Stock Company (OJSC) Mineral and Chemical Company 'Eurochem', member of the Eurochem group of companies, and JSC Acron and JSC Dorogobuzh, members of 'Acron' Holding Company 'Acron', and Ukrainian exporting producer, Open Joint Stock Company (OJSC) Azot Cherkassy 'Cherkassy'.
- (4) By Regulation (EC) No 1996/2004 ⁽³⁾, the Commission accepted a new undertaking from the exporting producers mentioned above until 20 May 2005.
- (5) By Regulation (EC) No 945/2005 ⁽⁴⁾, following an interim review limited in scope to the definition of the product concerned, the Council decided that the definition of the product concerned should be clarified and that the measures in force should also apply to the product concerned when incorporated in other fertilizers, in proportion to their content of ammonium nitrate, together with other marginal substances and nutrients.
- (6) On 30 November 2005, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽⁵⁾, the initiation of a partial interim review concerning imports into the Community of ammonium nitrate originating in Russia upon request of Eurochem.
- (7) On 19 December 2006, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽⁶⁾, the initiation of a partial interim review concerning imports into the Community of ammonium nitrate originating in Russia upon the request of Acron.
- (8) On 19 December 2006, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽⁷⁾, the initiation of a partial interim review concerning imports into the Community of ammonium nitrate originating in Ukraine upon the request of Cherkassy.

⁽¹⁾ OJ L 182, 19.5.2004, p. 28.

⁽²⁾ OJ L 183, 20.5.2004, p. 13.

⁽³⁾ OJ L 344, 20.11.2004, p. 24.

⁽⁴⁾ OJ L 160, 23.6.2005, p. 1.

⁽⁵⁾ OJ C 300, 30.11.2005, p. 8.

⁽⁶⁾ OJ C 311, 19.12.2006, p. 55.

⁽⁷⁾ OJ C 311, 19.12.2006, p. 57.

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- (9) The definitive findings and conclusions of the partial interim review concerning Acron and Cherkassy are set out in Council Regulation (EC) No 236/2008 ⁽¹⁾ and Council Regulation (EC) No 237/2008 ⁽²⁾. During the interim reviews Acron and Cherkassy expressed an interest in offering a price undertaking but failed to submit a duly substantiated offer within the deadline as set out in Article 8(2) of the basic Regulation. However, as stated in the above mentioned Council Regulations, the Council considered that both companies should exceptionally be allowed to complete their undertaking offers within 10 calendar days from entry into force of that Regulation due to reasons set out in recitals 61 and 62 of Regulation (EC) No 236/2008 and recitals 46 and 47 of Regulation (EC) No 237/2008. Subsequent of the publication of the above mentioned Council Regulations and within the deadline as set out in those Regulations, Acron and Cherkassy submitted acceptable price undertakings in accordance with Article 8(1) of the basic Regulation.
- (10) The definitive findings and conclusions of the partial interim review concerning Eurochem are set out in Council Regulation (EC) No 2008/661/EC ⁽³⁾ imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia. During the course of the investigation Eurochem has submitted an acceptable price undertaking within the Article 8(1) of the basic Regulation.
- (11) These measures were maintained by Regulation 2008/661/EC following an expiry review initiated on 14 April 2007 ⁽⁴⁾.

B. UNDERTAKINGS

- (12) In the framework of these partial interim reviews, the exporting producers offered undertakings in accordance with Article 8(1) of the basic Regulation. In these undertakings, the exporting producers offered to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. In addition, the offers made provide for the indexation of the minimum prices in accordance with public international quotations of the product concerned, given that the prices of the product concerned vary significantly. The exporting producers also offered to respect a certain quantitative ceiling in order to avoid that their imports could influence the prices in France or in the United Kingdom. Those prices serve as a basis for the indexation. The level of the quantitative ceilings is set in total around 12 % of the total Community consumption of the product concerned.

⁽¹⁾ OJ L 75, 18.3.2008, p. 1.

⁽²⁾ OJ L 75, 18.3.2008, p. 8.

⁽³⁾ See page 1 of this Official Journal.

⁽⁴⁾ OJ C 81, 14.4.2007, p. 2.

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- (13) Moreover, the exporting producers — in order to reduce the risk of price violations by means of cross-compensation of the prices — offered not to sell the product covered by the undertakings to the same customers in the European Community to which they sell other products, with the exception of certain other products for which the exporting producers undertake to respect specific price regimes.
- (14) The exporting producers will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission. Furthermore, the sales structures of the exporting producers are such that the Commission considers that the risk of circumventing the undertakings is limited.
- (15) Subsequent to the disclosure of the undertaking offers, the Community industry objected to these undertaking offers. The Community industry argued that the prices of the product concerned are volatile and that an indexation of the minimum import prices based on the quoted prices of the product concerned is not workable under all market conditions, in particular it would not be workable in a supply driven market. Therefore, the Community industry suggested to base the indexation of the minimum prices on the prices of natural gas as quoted at Waidhaus. However, in this regard it has to be noted that a natural gas price based indexation is not considered to be feasible in these cases due to the poor correlation of the product concerned and natural gas prices. As concerns the Community industry's comments that on a supply driven market the current indexation formula will not be workable, it is noted that the Commission will monitor these undertakings and should *prima facie* evidence exist that these undertakings are no longer workable, the Commission should act expeditiously to remedy the situation, as set out in recital 19.
- (16) The Community industry further argued that the level of the quantitative ceilings would be too high and requested it to be set maximum at 4 % of total Community consumption. It claimed that the companies would be able to influence the prices on the Community market with the amounts mentioned in recital 12 and thus make the indexation of the minimum prices unworkable. In this respect it should be noted that the quantitative ceiling was established at a level which was considered to (i) satisfactorily limit the risk of companies influencing the prices on the UK and French market thus rendering the indexation formula unworkable (ii) be sufficiently high so that so that the undertakings remain practicable at the same time. Moreover, the Community industry failed to substantiate its argument as to how any quantity exceeding 4 % of the total Community consumption would be sufficient to have a detrimental impact on prices.

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- (17) The Community industry proposed moreover the introduction of a 'progressive quantitative ceiling' whereby the quantitative ceiling of each exporting producer shall be increased on a yearly basis depending on them respecting the terms of the undertakings. This suggestion is however rejected because the sole aim of the quantitative ceilings is to limit the risk of influencing the prices on which the indexation of minimum price is based. It should also be noted that in case of a breach of the undertaking, the acceptance of the undertaking as such may be withdrawn.
- (18) Furthermore, the Community industry argued that because the exporting producers can sell other products together with the product covered by the undertaking to the same customers in the European Community, there is a high risk of cross-compensation, i.e. the products not covered by the undertaking may be sold at artificially low prices in order to compensate the minimum prices for the products covered by the undertaking. In this regard, it should be noted, as indicated in recital 13, the undertaking contains specific clauses in order to limit the risk of cross-compensation. Therefore, the concerns of the Community industry have been sufficiently addressed.
- (19) In view of the above, the undertakings offered by the Russian and Ukrainian exporting producers are acceptable.
- (20) However, due to the special elements of these undertakings (i.e. in particular the indexation formula) the Commission will assess the practicability of these undertakings regularly. For its practicability assessment, the Commission will take into account, but is not restricted to, the following criteria: the prices of the product concerned in the French and the UK market; the level of the coefficient of the indexation formula; the sales prices of the exporting producer as reported by them in their quarterly sales reports; profitability of the Community industry. In particular, should this practicability assessment show that the decrease of the profitability of the Community industry is attributable to the undertakings, the Commission endeavours to withdraw the acceptance of the undertakings expeditiously in accordance with Article 8(9) of the basic Regulation.
- (21) In order to enable the Commission to monitor effectively the companies' compliance with the undertakings, when the request for release into free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional on (i) the presentation of an undertaking invoice containing at least the elements listed in the Annex to Regulation (EC) No 2008/661/EC and in the Annex to Council

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Regulation (EC) No 2008/662/EC ⁽¹⁾; (ii) the fact that imported goods are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community; and (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty shall instead be payable.

- (22) To further ensure the respect of these undertakings, importers have been made aware by the Regulation (EC) No 2008/661/EC and by Regulation (EC) No 2008/662/EC that the non-fulfillment of the conditions provided for by those Regulations, or the withdrawal by the Commission of the acceptance of the undertaking, may lead to the customs debt being incurred for the relevant transactions.
- (23) 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 imposed in accordance with Article 9(4) of the basic Regulation shall automatically apply pursuant to Article 8(9) of the basic Regulation,

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by the exporting producers mentioned below in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Ukraine are hereby accepted.

▼M1

Country	Companies	Taric additional code
Russia	JSC Acron, Veliky Novgorod, Russia and JSC Dorogobuzh, Dorogobuzh, Russia, members of 'Acron' Holding Company	A532

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Article 2

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

⁽¹⁾ See page 35 of this Official Journal.