



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.10.2005
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Proposal for a

COUNCIL REGULATION

amending Regulation (EEC) No 3068/92 imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus or the Russian Federation

(presented by the Commission)

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 461/2004 of 8 March 2004 ('the basic Regulation') in the proceeding concerning imports of potassium chloride originating, inter alia, in Russia.

- **General context**

This proposal is made within the context of the implementation of the basic Regulation and is the result of enquiries carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

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

By Regulation (EC) No 3068/92, the Council imposed definitive anti-dumping measures on potassium chloride originating inter alia in Russia. By Regulation (EC) No 858/2005, the Commission accepted price undertakings from, inter alia, companies in Russia.

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

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

The interested parties concerned have already had the possibility to defend their interests, 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 for the circumstances surrounding the present proposal.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

By Regulation (EEC) No 3068/92, the Council imposed definitive anti-dumping duties on imports of potassium chloride originating, inter alia, in Russia ('the existing measures').

In January 2004, separate requests were received from JSC Silvinit and JSC Uralkali ('the applicants') for individual partial interim reviews of the existing measures pursuant to Article 11(3) of the basic Anti-Dumping Regulation.

Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of partial interim reviews, the Commission published notices of initiation and commenced an investigation.

The attached draft Regulation amends Regulation 3068/92 and contains the results of the partial interim review investigations. The main findings concern reduced dumping margins for the companies concerned. In addition, an exemption to the anti-dumping duties is now granted subject to certain conditions as undertakings have been accepted by the Commission from the Russian companies concerned.

The Member States were consulted on this course of action. 23 Member States supported the proposal. 2 Member States abstained.

It is therefore proposed that the Council adopts the attached proposal for a Regulation.

- **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 461/2004 of 8 March 2004.

- **Subsidiarity principle**

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

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(s):

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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amending Regulation (EEC) No 3068/92 imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus or the Russian Federation

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 Community¹ (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. Previous investigations and existing measures

- (1) Following an investigation (‘the previous investigation’), the Council, by Regulation (EC) No 969/2000², amended the measures originally imposed by Regulation (EEC) No 3068/92³ on imports of potassium chloride originating, *inter alia*, in Russia (‘the existing measures’).
- (2) In March 2004, by means of a notice published in the *Official Journal of the European Union*⁴, the Commission launched, on its own initiative, a partial interim review of the existing measures to examine whether they should be amended to take account of the enlargement of the European Union to 25 Member States on 1 May 2004 (‘Enlargement’).
- (3) The results of that partial interim review showed that it was in the interests of the Community to provide for the temporary adaptation of the existing measures so as to avoid a sudden and excessively negative impact on importers and users in the ten new Member States immediately following Enlargement.

¹ OJ L 56, 6.3.1996, p.1. Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p.12).

² OJ L 112, 11.5.2000, p.4.

³ OJ L 308, 24.10.1992, p.41.

⁴ OJ C 70, 20.3.2004, p.15.

- (4) To this end, in May 2004, by Regulation (EC) No 1002/2004⁵, the Commission accepted undertakings from two exporting producers in Russia, namely JSC Silvinit and JSC Uralkali for a period of one year. In June 2005, by Regulation (EC) No 858/2005⁶ new undertakings, which expire on 13 April 2006, were accepted from the two exporting producers in Russia. In addition, in order to provide for the exemption from the anti-dumping duties imposed by Regulation (EEC) No 3068/92 on imports made under the terms of the undertakings, Regulation (EEC) No 3068/92 was amended by Regulation (EC) No 992/2004⁷.
- (5) It should also be noted that all references to ‘the Community’ or ‘the Community of 15’ in the present Regulation shall be taken to mean, unless otherwise specified, the Community as constituted immediately before Enlargement.

2. Grounds for the present reviews

- (6) In January 2004, separate requests were received from JSC Silvinit and JSC Uralkali (‘the applicants’) for individual partial interim reviews of the existing measures pursuant to Article 11(3) of the basic Regulation.
- (7) The applicants alleged and provided sufficient *prima facie* evidence that a comparison of normal value based on their own costs/domestic prices and their export prices to the Community would lead to a removal of dumping. Therefore, the continued imposition of the existing measures at the existing levels, which were based on the level of dumping previously established, were no longer necessary to offset dumping.
- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of partial interim reviews, the Commission published notices of initiation and commenced an investigation⁸.

3. Period of Investigation

- (9) The investigation was limited to dumping and covered the period from 1 April 2003 until 30 March 2004 (the ‘investigation period’ or ‘IP’).

4. Parties concerned by the investigation

- (10) The Commission officially advised the representatives of the exporting country, the applicants and the Community industry of the initiation of the interim reviews and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing. The Commission also sent questionnaires to the applicants. Questionnaires replies were received from the applicants and from an exporting trader in Russia related to one of the applicant companies.

⁵ OJ L 183, 20.5.2004, p.16. Regulation as last amended by Commission Regulation (EC) No 588/2005 (OJ L 98, 16.4.2005, p.11).

⁶ OJ L 143, 7.6.2005, p.11.

⁷ OJ L 182, 19.5.2004, p.23.

⁸ OJ C 93, 17.4.2004, p.2 and p.3.

(11) The Commission sought and verified all information it deemed necessary for the purpose of the determination of dumping and carried out verifications of the replies to the questionnaire at the premises of the following companies:

(a) *Exporting producers in Russia:*

JSC Silvinit, Solikamsk, Perm Region, Russia,

JSC Uralkali, Berezniki, Perm Region, Russia,

(b) *Related exporter to JSC Silvinit:*

International Potash Company, Moscow, Russia

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(12) The product is the same as in previous investigation, i.e. potassium chloride ('potash' or KCl) and is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphorus, potassium). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide (K₂O) on the dry anhydrous product. It is also used as a raw material in the manufacture of certain industrial and pharmaceutical products.

(13) Potash is generally commercialised in either a standard/powder form ('standard potash') or in other than standard form that includes - but is not limited to - a granular form ('granular potash'). The product is generally classified into three basic categories, based on the K₂O content, namely:

-potassium content not exceeding 40% K₂O - falling within Combined Nomenclature ('CN') code 3104 20 10,

-potassium content exceeding 40% K₂O but less than or equal to 62% - falling within CN code 3104 20 50,

-potassium content over 62% K₂O - falling within CN code 3104 20 90.

(14) It should be recalled that in the previous investigation it was found that imports of certain special mixtures or blends with an unusually high content of potash which do not fall under any of the CN codes for potash indicated above, should also be considered as the product concerned. This conclusion was reached as such mixtures and blends shared the same basic physical and chemical characteristics and have the same uses as the basic categories mentioned above. Accordingly, such mixtures or blends falling within CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91 and ex 3105 90 99 were also included in the present investigation and constitute part of the product concerned.

2. Like product

- (15) It was established that, as there were no differences in the physical or chemical properties between the product exported from Russia to the Community and the product produced in Russia and sold on the Russian domestic market, they were considered to be like products for the purposes of the present investigation.

C. DUMPING WITH REGARD TO THE APPLICANTS

1. Normal value

- (16) As far as the determination of normal value is concerned, it was first established whether the total volume of each of the applicants' total domestic sales of the like product were representative in comparison with their respective total export sales volumes to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered to be representative when each of the applicants' domestic sales volumes of the like product constituted at least 5% of their respective total export sales volumes to the Community during the investigation period. On this basis, for both applicants, overall domestic sales of the product concerned during the IP were found to have been made in representative quantities.
- (17) Subsequently, by defining the product types in accordance with the TARIC codes under which the product is classified (i.e. by standard grade or other than standard grade, including granular) and by the packing or form in which it is shipped (i.e. in bulk, in bags or in containers), an analysis was made as to whether the domestic sales of each product type were representative. Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5% or more of the total sales volume of the comparable product type exported to the Community.
- (18) As a result of this analysis, it was found that one exporting producer, JSC Silvinit, had only sold one exported product type in representative quantities on the domestic market. For the other exporting producer, JSC Uralkali, it was found that all exported product types had been sold in representative quantities on the domestic market.
- (19) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade by establishing the proportion of profitable sales to independent customers of the type in question.
- (20) In this regard, it was found for JSC Uralkali that its domestic sales prices for the best sold product type exported to the Community (the 'best sold export type') accounting for over 99% of such exports, showed unusual trends during the investigation period. It was established that, during the investigation period, 77% of domestic sales of the best sold exported type had been made to one customer in Russia and that the sales price to this particular customer had, in the space of one month in the middle of the investigation period, more than doubled. Price rises for the same product type sold to other domestic customers also rose at the same time, but only by a margin of around 40%. Examination of price rises for other potash types sold domestically showed similar price increases of around 40% during the investigation period.

- (21) In view of this particular market situation with regard to pricing for a key product type used to calculate the dumping margin, pursuant to Article 2(3) of the basic Regulation it is considered that such sales do not permit a proper comparison. Given the significance of such sales in the domestic sales volumes of the type in question, and the importance of this type in the overall export volume of potash exported by the company concerned to the Community, it is considered reasonable to disregard these specific sales to the customer in question. The remaining domestic sales of this product type to other customers were found to be below the 5% threshold considered necessary for them to be regarded as representative. Accordingly, normal value for this product type was calculated on the basis of the cost of production of the exporting producer concerned, plus a reasonable amount for selling, general and administrative costs and profit. The amounts for selling, general and administrative costs and for profit were based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.
- (22) It was submitted by Uralkali that the “particular market situation” foreseen in Article 2(3) of the basic Regulation is not applicable for the sales of the product concerned to the customer in question and therefore the domestic prices for the product type concerned should have been used to establish normal value. In this regard it was argued (i) that the provision of Article 2(3) of the basic Regulation would not apply in case of “artificially high prices” and (ii) that special conditions applied to only one specific client could not be considered to constitute a “particular market situation” for the Russian domestic market as a whole. Moreover, it was claimed that the prices in question were resulting from “market forces” and reflected “the actual situation on the market”.
- (23) With regard to the above, it should be noted that the particular market situations referred to in article 2(3) of the basic Regulation are not exhaustive and that the particularity of the market should be assessed, *inter alia*, in light of price variations and trends rather than solely on the basis of the absolute level of the prices. In this case both low priced sales transactions and high priced transactions were excluded from the calculations since they did not reflect a level of prices of a lasting nature and since those prices did not appear to reflect market forces as such trends were not found for any other product type or for any other client of Uralkali. Secondly, Article 2(3) of the basic Regulation provides that normal value may be constructed in situations where “...because of a particular market situation such sales do not permit a proper comparison...”. This clearly allows that, as in the current situation, sales to a customer which are considered not to permit a proper comparison may be disregarded as a basis for establishing normal value. This conclusion does not relate to the Russian market as a whole but rather to these sales of Uralkali.
- (24) As concerns JSC Silvinit, where the sales volume of one product type, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the adjusted unit cost, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that product type made during the IP, irrespective of whether these sales were profitable or not.

- (25) For the other product type of JSC Silvinit, which was sold in insufficient quantities for the domestic prices to provide an appropriate basis for the establishment of the normal value, another method had to be applied. In this case, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the adjusted unit cost of the exported type, a reasonable percentage for selling, general and administrative expenses and a reasonable margin of profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.
- (26) It was claimed by Uralkali that the profit margin used in the construction of the normal value did not properly take into account the adjustments of the gas costs, as the profits used for the constructed normal values were derived from the company's accounts before adjustments. However, this claim could not be accepted since in accordance with the *chapeau* of Article 2(6) the actual profit amounts realised by the company in the domestic market should be used for the construction of the normal value.
- (27) As concerns energy costs, such as electricity and gas used in the mining and production processes of the product concerned, the investigation established that these costs form a significant proportion of the total cost of manufacturing of potash producers, not only in Russia but in other producing countries as well. In this regard, it was submitted by the Community industry that the energy cost per unit of electricity and gas paid by the Russian companies to their utilities suppliers did not reasonably reflect the actual production cost of the electricity and gas purchased.
- (28) In view of these allegations, it was considered appropriate in the present case to also compare the applicants' energy purchase costs per unit to those of another major potash producer with similar production methods, output levels and similar natural advantages. As there are no other producers of potash in Russia, this information was sought and obtained from a large producer of potash in Canada.
- (29) The data provided showed that the energy requirements of the Canadian producer were similar to those of the applicant Russian producers and that electricity and gas purchased by this company was derived from domestic hydro-electric power and major gas fields, as is the electricity and gas used by the Russian companies. The comparison showed that the cost per unit for electricity paid by the Canadian producer was not too dissimilar to that paid by the Russian producers.
- (30) As concerns gas supplies, it was established on the basis of data found in the published annual report for 2003 of the Russian gas provider OAO Gazprom (whose regional distributor was also the supplier to the exporting producers in question), that the domestic price of gas paid by the two Russian Producers was around one fifth of the export price from Russia. The same report clearly stated that "OAO Gazprom did not make any profit in the domestic market". While there is no officially available information as to the profitability of Russian domestic gas prices, quotes from Russian government sources in the press together with data obtained from specialized market intelligence sources and governmental websites all strongly suggest that the gas prices charged to domestic customers were made at prices far from cost recovery levels. Moreover, the price of gas paid by the two Russian Producers was significantly lower than the gas price paid by the Canadian producers.

- (31) In view of the above, it was therefore considered that the prices charged by the regional Russian gas provider to the Russian potash producers in the investigation period could not reasonably reflect the costs associated with the production of gas when compared to the exported price of gas from Russia and the price of a Canadian gas provider to a major industrial user in Canada. In accordance, therefore, with Article 2(5) of the basic Regulation, an adjustment to the cost of production for each of the applicants was made. In the absence of any other reasonable basis, such an adjustment was made using information concerning the price of gas for export, net of transport costs, customs export tax, value added tax and excise duty.
- (32) In this regard, it was submitted by one of the applicants that the charges for gas were properly reflected in its accounting records, therefore no adjustment was warranted under Article 2(5) of the basic Regulation. In response to this argument it is not disputed that the company has correctly accounted for the invoiced prices paid, rather the adjustment is justified by the fact that the price of the gas purchased does not reasonably reflect the cost of production and distribution of the gas.
- (33) On the adjustment for the gas costs, it was also submitted by the Russian Authorities that the Commission had not taken into account the different transportation costs between the gas sold domestically for industrial usage and the gas sold for export. It should be recalled (see recital (31)) that the comparison which has led to the adjustment has been made between the gas prices actually paid by the companies and the export prices charged by the Russian gas provider OAO Gazprom for export from Russia, net of transport costs, customs export tax, value added tax and excise duty. Therefore, this claim was rejected.
- (34) One of the applicants submitted that it had a significantly lower unit cost of production during the first quarter of 2004 (i.e. the last quarter of the investigation period) due to increased efficiency and lower maintenance costs and that this lower unit cost should be considered as the basis for the cost of production for the whole investigation period. This request was not granted as the appropriate basis for establishing such costs is the full investigation period, rather than costs occurring in an exceptional, shorter, period.
- (35) As also concerns cost of production, it was submitted by the Community industry that depreciation of capital assets should, for the purpose of the applicants' cost of production, be based on the replacement costs of such assets (e.g. new mine shafts and machinery etc). In this regard, it was argued that depreciation based conventionally on the acquisition (historical) value of the capital assets would not, in accordance with Article 2(5) of the basic Regulation, reasonably reflect the costs associated with the production of the product concerned. It was submitted, therefore, that an upward adjustment to the Russian producers' costs was required.
- (36) As concerns this submission, it was noted that depreciation based on the acquisition value and residual economical life of capital assets appears to be in line with accounting practices in the mining industry. Therefore, in order to establish whether the depreciation included in the cost of production data reasonably reflected the costs associated with the production of the product concerned, the investigation focused on the way the historical values of the assets had been established.
- (37) In this regard, the on-spot verification visits to the Russian producers showed that the original value of their assets had been determined on the basis of valuations carried out

during the privatization process which took place in 1993. These asset values were subsequently revised between 1993 and 1997 as a result of the application of 'Revaluation Coefficients' issued by the Russian Government to deal with hyperinflation. At the end of 1997, following a Decree of the Russian Government, independent valuations of assets were carried out by independent evaluators. Three basic criteria were adopted in establishing these asset values, one of which was the replacement value of the asset. The result of these independent assessments are reflected in the opening Balance Sheet of the applicants in 1998.

- (38) Nevertheless, despite this upward valuation of the original values, it was noted that the asset values of the applicants, when expressed as a ratio of production to value of the assets, still appear to be significantly lower than the asset values of the companies comprising the Community Industry and a major producer with similar extraction and production capacity in Canada. Such an assessment, however, does not take into account the obsolescence and lower technological level of the assets of the Russian producers obtained prior to the privatisation which took place in 1993.
- (39) Therefore in the absence of any substantive evidence showing that depreciation had not been correctly reflected in the accounts of the exporting producers, it is not considered possible at the present time to make any adjustment to depreciation costs in the cost of production data used for establishing the normal value of the applicants.
- (40) The Community industry also submitted that an allocation for environmental protection costs comparable to those incurred by the Community producers should also be factored into the cost of production calculations. It was found, however, that the applicants had incurred such costs and had accounted for them in the cost of production calculations. With regard to whether such costs should be of a similar proportion or magnitude to those of the Community producers, it is considered that as long as the applicants have met the environmental protection levels prescribed by the Russian authorities and that the costs involved in meeting such levels are correctly reflected in their records, no adjustment is required. As this was found to be the case for both of the applicants, no adjustment was warranted for environmental costs.

2. Export price

JSC Silvinit ('Silvinit')

- (41) With regard to Silvinit, it was found that most of the company's sales of potash to the Community in the investigation period were made via an unrelated Swiss trading company. For the purposes of the present investigation and pursuant to Article 2(8) of the basic Regulation, the prices, actually paid or payable to Silvinit by this trading company, were taken as the basis for calculating the export price.
- (42) However, it was found that two transactions were made via Silvinit's related Russian trading company, International Potash Company ('IPC'), to a related company in Belgium called Ferchimex AS ('Ferchimex'), which processed the imported potash into a product not covered by the investigation. In accordance with Article 2(9) of the basic Regulation, the prices charged by IPC to Ferchimex may be disregarded if they are considered to be unreliable. It was noted that for both of the transactions, the sales price to Ferchimex were at a broadly similar price for the same types when sold to independent customers in the Community. Moreover, both transactions concerned

only minor quantities. Therefore, they were both included in the overall determination of the export price.

JSC Uralkali ('Uralkali')

- (43) As concerns Uralkali, it was found that all of the company's sales of potash to the Community in the investigation period were made directly to a trader situated in Cyprus called Fertexim Ltd which acted as an exclusive distributor for Uralkali. For such sales, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of the prices actually paid or payable by Fertexim.

3. Comparison

- (44) The normal value and export prices for both of the applicants were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance was made for differences which affect price comparability in accordance with Article 2(10) of the basic Regulation.
- (45) Accordingly, allowances for differences in respect of discounts, transport, insurance, handling, loading and ancillary costs, packing and credit costs have been granted where applicable and supported by evidence.

4. Dumping margin

- (46) In accordance with Article 2(11) of the basic Regulation, for each exporting producer the adjusted weighted average normal value by product type was compared to the adjusted weighted average export price of each corresponding type of the product concerned sold to the Community.
- (47) The comparison showed the existence of dumping for both of the companies concerned, however, at significantly lower levels than those established previously. As a weighted average of all types exported to the Community, expressed as percentages of the total CIF Community frontier price, duty unpaid, the dumping margins established were as follows:

Exporting Producer	% Dumping Margin
JSC Silvinit	23,0%
JSC Uralkali	12,3%

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (48) In accordance with Article 11(3) of the basic Regulation, an analysis was made as to whether the circumstances with regard to dumping had changed significantly and if any change could be said to be of a lasting nature. In this regard, it was found that the change in the dumping margins resulted from a lowering of the normal values of the applicants.
- (49) In this regard, it should be noted that in the present investigation, normal value was established on the basis of the applicants' costs and prices. Moreover, contrary to the findings in the previous investigation, domestic consumption for potash has been

steadily increasing in the last few years and, overall, the domestic sales prices of both Russian producers are profitable.

- (50) As concerns the lasting nature of export sales prices on markets other than the Community, neither of the applicants was able to provide detailed data on a transaction-by-transaction basis at producer level. Aggregated data was, however, provided by country of destination and by product type. This was considered sufficient for the purposes of the present partial interim review as an exact determination of sales prices on such markets is not an absolute requirement. In the absence of detailed data, and in view of (i) the variety of delivery terms used for such sales (e.g. CIF, FOB, FCA etc) (ii) the different logistical arrangements and combinations (e.g. rail + sea, rail only etc) (iii) the differences in distances and transport and handling costs to various destinations in Asia and South America, the Commission was not in a position to determine with exactitude the sales prices to each country. There were, however, indications that sales price levels to the non-Community markets were, allowing for transport costs, of the same order of magnitude as sales to the Community.
- (51) In view of all these factors, it is considered appropriate to amend the existing measures insofar as they concern the applicants by lowering the dumping margins to those established in the present investigation.
- (52) According to Article 9(4) of the basic Regulation, the amount of the anti-dumping duties should not exceed the margins of dumping established, but they should be less than those margins if such lesser duties would be adequate to remove the injury of the Community Industry. As the existing duties for the applicants had been calculated on the basis of the dumping margins, and as the new dumping margins are lower than the ones previously calculated, the duties should be adjusted to the lower dumping margins found in this investigation, namely 23,0% for JSC Silvinit and 12,3% for JSC Uralkali.
- (53) The interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the anti-dumping duties originally imposed by Council Regulation (EEC) No 3068/92 be amended. They were given the opportunity to comment and to request a hearing. All comments received were taken into consideration where appropriate.

E. UNDERTAKINGS

- (54) Following disclosure of the essential facts and considerations on the basis of which it was intended to recommend that the anti-dumping duties originally imposed by Council Regulation (EEC) No 3068/92 be amended, both of the applicants offered price undertakings in accordance with Article 8(1) of the basic Regulation.
- (55) The Commission, by Decision 2005/.../EC⁹, accepted the undertakings offered by the applicants. The reasons for accepting these undertakings are set out in that Decision.

⁹ OJ

F. FORM OF THE MEASURES WITH REGARD TO THE APPLICANTS

- (56) The existing measures are applicable to eight CN codes and comprise fixed amounts ranging from 19,61 €/tonne to 40,63 €/tonne, depending on the product type. During the current investigation period, however, it was found that almost all the exports by the applicants to the Community were limited to a product type falling under one CN code.
- (57) Accordingly, in view of the absence of information on the other product types, and as the particular type of potash concerned appears now to be the most commercialised, the most reasonable approach for implementing the amended duties is considered to be the replacement of all the fixed amounts with a single *ad valorem* duty for all potash types manufactured by the applicants.

HAS ADOPTED THIS REGULATION:

Article 1

1. In Regulation (EEC) No 3068/92, the first paragraph of Article 1 of shall be amended to read:

‘A definitive anti-dumping duty is hereby imposed on imports of potassium chloride falling within CN codes 3104 20 10, 3104 20 50, 3104 20 90, and on special mixtures falling within CN codes ex 3105 20 10 (TARIC codes 3105 20 10 10 and 3105 20 10 20), ex 3105 20 90 (TARIC codes 3105 20 90 10 and 3105 20 90 20), ex 3105 60 90 (TARIC codes 3105 60 90 10 and 3105 60 90 20), ex 3105 90 91 (TARIC codes 3105 90 91 10 and 3105 90 91 20), ex 3105 90 99 (TARIC codes 3105 90 99 10 and 3105 90 99 20), originating in Belarus or Russia.’

2. In Regulation (EEC) No 3068/92, the heading for the table relating to ‘Russia’ in the third paragraph of Article 1 of shall be amended as follows:

‘Russia (all companies excluding JSC Silvinit and JSC Uralkali – TARIC additional code A999)’

3. In Regulation (EEC) No 3068/92, the following shall be inserted as the fourth paragraph of Article 1:

‘For the imports of the exporting producers mentioned below, the rate of the anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for the products described in paragraph 1 shall be as follows:

	Rate of duty	TARIC additional code
Company:		
- JSC Silvinit, Solikamsk, Russia	23,0%	A665
- JSC Uralkali, Berezniki, Russia	12,3%	A666

4. In Regulation (EEC) No 3068/92, Article 1, paragraphs 4 and 5 shall be renumbered paragraphs 5 and 6 respectively.

5. In Regulation (EEC) No 3068/92, Article 1a, paragraph 1 shall be amended as follows:

‘Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the Commission Regulation (EC) No 858/2005 and in Commission Decision No 2005/[INSERT]/EC, as from time to time amended, and have been imported in conformity with the provisions of the same Commission acts.

Article 2

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