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Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, ('the basic Regulation') in the expiry review proceeding concerning imports of ammonium nitrate originating in Ukraine.

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

Council Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty of EUR 33,25 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 originating in Ukraine.

Council Regulation (EC) No 945/2005, by which, following an interim review limited in scope to the definition of the product concerned, the wording 'ammonium nitrate' in the original Regulation was replaced by 'solid fertilizers with an ammonium nitrate content exceeding 80% by weight'.

Council Regulation (EC) No 442/2007 of 19 April 2007 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine following an expiry review pursuant to article 11(2) of Regulation (EC) No 384/96.

Consistency with 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 23 April 2009, the Commission initiated an expiry review of the anti-dumping measures in force in respect of imports of ammonium nitrate ('AN') originating in Ukraine.

The purpose of this investigation was to examine whether there is continuation or recurrence of dumping regarding imports of AN originating in Ukraine, thereby causing a continuation or recurrence of injury to the Union industry.

The investigation showed that imports of AN originating in Ukraine were dumped, and a likelihood of continuation of dumping as well as a likelihood of recurrence of injury was established. However, the investigation also showed that the price of gas in Ukraine showed an increasing trend during the review investigation period ('RIP') and even if it was on average 40% below international market prices, it reached international levels in the end of the RIP. Based on data available it is however uncertain whether the trend observed in gas prices can be considered as lasting.

It is therefore concluded that anti-dumping measures have to be maintained on imports from Ukraine.

In view of the findings of the investigation 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* by 22 July 2010 at the latest.

Legal basis

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

Subsidiarity principle

The proposal falls under the exclusive competence of the Union. 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 Union, 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 because the basic Regulation does not foresee alternative options.

BUDGETARY IMPLICATION

The proposal has no implication for the budget of the European Union.

Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ repealing Council Regulation (EC) no 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community² (the 'basic Regulation'), and in particular Article 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) On 22 January 2001 the Council imposed, by Regulation (EC) No 132/2001³, a definitive anti-dumping duty ('the existing measures') of EUR 33,25 per tonne on imports of ammonium nitrate ('AN') falling within CN codes 3102 30 90 and 3102 40 90 and originating, *inter alia*, in Ukraine. The investigation that led to these measures will be referred to as 'the original investigation'.
- (2) On 17 May 2004, following a partial interim review, by Regulation (EC) No 993/2004⁴ the Council exempted from the anti-dumping duties imposed by Council Regulation (EC) No 132/2001 imports to the Union of the product concerned produced by companies from which undertakings would be accepted by the Commission. By Commission Regulation (EC) No 1001/2004⁵, as last amended by Commission Regulation (EC) No 1996/2004⁶, undertakings were accepted for a period until 20

¹ OJ L 343, 22.12.2009, p.51.

² OJ L 56, 6.3.1996, p.1.

³ OJ L 23, 25.1.2001, p.1.

⁴ OJ L 182, 19.5.2004, p.28.

⁵ OJ L 183, 20.5.2004, p.13

⁶ OJ L 344, 20.11.2004, p.24

May 2005. The purpose of these undertakings was to take account of certain consequences of the enlargement of the European Union to 25 Member States.

- (3) By Regulation (EC) No 945/2005⁷, 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 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.
- (4) By Regulation (EC) No 442/2007⁸, following an expiry review, the Council decided to prolong the existing measures, as clarified by Regulation (EC) No 945/2005, for a period of two years.
- (5) By Regulation (EC) No 661/2008⁹, following an expiry review, the Council imposed definitive anti-dumping measures on imports of AN originating in Russia.
- (6) By Regulation (EC) No 662/2008¹⁰, the Council amended Regulation (EC) No 442/2007 by accepting a price undertaking offered by one exporting producer.

2. Request for a review

- (7) On 22 January 2009, a request for an expiry review pursuant to Article 11(2) of the basic Regulation was lodged following the publication of a notice of impending expiry on 17 October 2008¹¹. This request was lodged by the European Fertilizer Manufacturers Association (EFMA) ('the applicant') on behalf of producers representing a major proportion, in this case more than 50 % of the total Union production of AN.
- (8) The applicant alleged and provided sufficient *prima facie* evidence that there is a likelihood of recurrence of dumping and injury to the Union industry with regard to imports of AN originating in Ukraine ('the country concerned').
- (9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 23 April 2009, by a notice of initiation published in the *Official Journal of the European Union*¹², the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

3. Investigation

3.1. Investigation period

- (10) The investigation of continuation or recurrence of dumping covered the period from 1 April 2008 to 31 March 2009 ('review investigation period' or 'RIP'). The examination

⁷ OJ L 160, 23.6.2005, p.1

⁸ OJ L 106, 24.4.2007, p.1

⁹ OJ L 185, 12.7.2008, p.1

¹⁰ OJ L 185, 12.7.2008, p.35

¹¹ OJ C 264, 17.10.2008, p.16

¹² OJ C 94, 23.4.2009, p.15

of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2005 to the end of the RIP ('period considered').

3.2. *Parties concerned by the investigation*

- (11) The Commission officially advised the exporting producers, importers and users known to be concerned and their associations, the representatives of the exporting country, the applicant and the Union producers of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (12) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (13) In view of the large number of Union producers and of importers in the Union, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the investigation and to provide the Commission with the information requested in the notice of initiation.
- (14) After examination of the information submitted, and given that twelve Union producers indicated their willingness to cooperate, it was decided that sampling was necessary with regard to Union producers. No importers came forward by providing the information requested in the notice of initiation.
- (15) Twelve Union producers accounting for around 80% of the total Union production during the RIP, properly completed the sampling form within the deadline and formally agreed to co-operate further in the investigation. On that basis, the Commission selected in accordance with Article 17 of the basic Regulation, a representative sample based on the largest representative volume of production and sales of AN in the Union which can reasonably be investigated within the time available. Five Union producers accounting for 57% of the total production of the Union industry during the RIP were selected in the sample.
- (16) In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted on the sample chosen and raised no objection thereto.
- (17) Questionnaires were sent to the five sampled Union producers and to all known exporting producers in the country concerned.
- (18) Replies to the questionnaires were received from the five sampled Union producers and three exporting producers in the country concerned.
- (19) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:
 - (a) Exporting producers in Ukraine:

- CJSC Severodonetsk Azot Association, Severodonetsk
- JSC Concern Stirol, Gorlovka
- OJSC Rivneazot, Rivne

(b) Union producers:

- GrowHow UK Limited, UK,
- GPN, Paris, France,
- Zakłady Azotowe Pulawi SA, Poland,
- Yara SA, Brussels, Belgium,
- Achema, Jonavos, Lithuania.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (20) The product concerned is solid fertilizers with an ammonium nitrate content exceeding 80% by weight originating in Ukraine, 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. AN is a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid, and its nitrogen content exceeds 28% by weight in prilled or granular form.
- (21) It should be noted that the scope of the product concerned was clarified in Regulation (EC) No 945/2005¹³.

2. Like product

- (22) As established in the original investigation, this review investigation confirmed that AN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. The product concerned and the products manufactured and sold by the exporting producers on their domestic market and to third countries, as well as those manufactured and sold by the Union producers on the Union market have thus been 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.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. General

- (23) Co-operation was obtained from three Ukrainian exporting producers. A fourth known exporting producer did not co-operate in the investigation.

¹³ See footnote 6

- (24) The comparison of the export volume of the three co-operating exporting producers with the total volume of exports to the Union from Ukraine showed that the three co-operating exporting producers accounted for more than 90% of all Union imports from Ukraine during the RIP. The level of co-operation was therefore considered to be high.
- (25) Total import volumes of the product concerned from Ukraine were low, representing a market share of 1,1 % in the RIP when compared to the Union market at a whole.

2. Dumping of imports during the RIP

2.1 Normal value

- (26) It is recalled that in the previous expiry review Ukraine was not yet considered a market economy country and therefore the normal value was based on data obtained from a co-operating producer in the USA, the analogue country.
- (27) In the present review normal value was based on data obtained and verified at the premises of the three co-operating exporting producers in Ukraine. The Commission examined whether their domestic sales could be considered as having been 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 on the domestic market by the co-operating exporting producers were examined.
- (28) As regards gas costs, it was found that Ukraine was importing the majority of the gas consumed in the production of AN from Russia. All data available and verified during the investigation indicated that Ukraine imported natural gas from Russia at a price which was during the RIP around 40% below the price of natural gas from Russia when exported to the Union. However, it was found that in the last quarter of the RIP the prices were similar.
- (29) It was found that apart from one product type exported by one producer, domestic sales were made in the ordinary course of trade during the RIP. Normal value was therefore established either based on the price paid or payable on the domestic market in Ukraine by unrelated customers pursuant to Article 2(1) of the basic Regulation or based on constructed normal value for the product type not sold in the ordinary course of trade. In accordance with Article 2(3) of the basic Regulation normal value was constructed by adding to the manufacturing costs of the exported type a reasonable amount of selling, general and administrative expenses (SG&A) and a reasonable margin of profit. These amounts for SG&A and profit were based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the concerned producer.
- (30) It should be noted that the normal value was determined without an adjustment for the gas costs borne by the Ukrainian exporting producers in accordance with Article 2(5) of the basic Regulation. This was because, as shown below in recitals (32) to (34), the use of the unadjusted domestic costs and prices of the Ukrainian exporting producers in spite of the apparently distorted gas prices already clearly shows that dumping took place during the RIP. As a consequence, and given the fact that the purpose of an expiry review is to determine whether dumping would be likely to continue or recur should measures be repealed in order to determine whether the currently applicable measures should be maintained or repealed, it was considered that it was not necessary

to examine whether an adjustment under Article 2(5) of the Basic Regulation was justified in this case.

2.2. *Export price*

- (31) In accordance with Article 2(8) of the basic Regulation, the export price was established by reference to the price actually paid or payable for the product concerned when sold for export to the Community. All sales of the three cooperating exporting producers were made directly to independent customers in the Union.

2.3. *Comparison*

- (32) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for the differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in transport, handling, loading and ancillary costs, insurance, commissions and packing, where applicable and supported by verified evidence.

2.4. *Dumping margin*

- (33) The dumping margin was established on the basis of a comparison of the weighted average normal value with a weighted average export price, in accordance with Articles 2(11) and (12) of the basic Regulation.
- (34) On a country-wide basis a weighted average dumping margin of 6-7% was established for the three cooperating exporting producers concerned.

3. **Development of imports should measures be repealed**

3.1 *Spare capacity and attractiveness of the Union market*

- (35) In the RIP, domestic sales of the three co-operating exporting producers represented on average 46% of their production capacity.
- (36) Though the three co-operating exporting producers sold a big proportion of their production on the domestic market, they were also dependent on exports to third countries. In the RIP they had a spare capacity corresponding to around 6% of the Union consumption.
- (37) Based on information in the review request regarding the fourth known Ukrainian producer which did not co-operate in the investigation, the total spare capacity in Ukraine during the RIP was estimated to amount to around 9% of the Union consumption.
- (38) Certain Ukrainian cooperating exporting producers claimed that they were increasingly losing market share on their domestic market to the benefit of Russian producers which can offer very low prices due to the much lower gas costs in Russia. It therefore appeared unlikely that the Ukrainian domestic market could absorb the spare production capacity and therefore any increase in production is likely to be exported.

- (39) The three co-operating companies exported AN to many other third countries on several continents during the RIP. However, it should be noted that certain traditional third country markets are closed to Ukrainian exports either because of anti-dumping measures in force (e.g. USA with anti-dumping measures of more than 100%) and/or because of safety restrictions (e.g. the People's Republic of China, Australia). In any event, the Union is the biggest, most attractive and at the same time geographically closest export market. Its attractiveness is additionally boosted by logistics advantages resulting from low rail tariffs in Ukraine.
- (40) In view of the above, it cannot be excluded that a large part of the spare capacity available in Ukraine could be used to increase exports to the Union in the absence of anti-dumping measures.

3.2. Prices in different export markets

- (41) An analysis of export sales of the three co-operating Ukrainian exporting producers to third countries showed that during the RIP export prices to third countries, when established on a CIF level using the international freight rates provided in the request for a review, were up to 25% lower than the prevailing market price in the Union.
- (42) On that basis, it therefore appeared that there would be an incentive for Ukrainian exports to third countries to be shifted to the Union, should measures be repealed. The higher prices in the Union market would allow Ukrainian exporters to achieve better profit margins.
- (43) Based on the figures provided by the three co-operating exporting producers, it could also be established that on a country-wide level exports from Ukraine to other third countries were made at dumped prices during the RIP.

3.3. Conclusion of the likelihood of continuation or recurrence of dumping

- (44) In view of the findings described above, it can be concluded that the exports from Ukraine are still being dumped and that there is a likelihood of continuation of dumping in the Union market in case the current anti-dumping measures are removed. Indeed, taking into account the existing spare capacity in Ukraine and the attractiveness of the Union market, there appears to be an incentive for Ukrainian exporting producers to i) increase their exports to the Union market and ii) shift AN exports from other third country markets to the Union market at dumped prices, at least as far as two exporting producers are concerned.
- (45) Furthermore, the weighted average export prices of the co-operating exporting producers to third country markets were found to be significantly lower than the prevailing price level in the Union. This reinforces the likelihood of increased exports from Ukraine to the Union at dumped prices, should measures be allowed to lapse.

D. DEFINITION OF THE UNION INDUSTRY

- (46) Within the Union, the like product is manufactured by 16 companies or group of companies whose output constitutes the total Union production of the like product within the meaning of Article 4(1) of the basic Regulation.
- (47) Twelve Union producers co-operated with the investigation:

- Achema AB (Lithuania),
- Agropolychim JSC (Bulgaria),
- Azomures (Romania),
- BASF AG (Germany),
- Fertiberia SA (Spain),
- GPN SA (France),
- GrowHow UK Ltd (United Kingdom),
- Neochim PLC (Bulgaria),
- Nitrogénművek Rt (Hungary),
- Yara (Belgium, France, Germany, Italy and the Netherlands),
- Zakłady Azotowe PULAWY SA (Poland),
- Zakłady Azotowe Tarnowie-Moscicach (Poland).

- (48) Given that these twelve Union producers accounted for around 80% of the total Union production during the RIP, it is considered that they constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They will be referred to as the ‘Union industry’.
- (49) As indicated in recitals (14) and (15) above, the selection of the sample of five Union producers was made on the basis of these twelve producers. All sampled producers cooperated and sent questionnaire replies within the deadlines. In addition, the remaining seven co-operating producers duly provided certain general data for the injury analysis.

E. SITUATION ON THE UNION MARKET

1. Consumption in the Union market

- (50) The apparent Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the sales volumes of the other Union producers on the Union market, Eurostat data for all Union imports and the information of the questionnaire responses of the co-operating companies as far as the imports of the product concerned from Ukraine are concerned. Given the enlargement of the Union to 27 Member States in 2007, for the sake of clarity and consistency of the analysis, all injury indicators were established on the basis of the EU-27 market throughout the period considered.
- (51) Between 2005 and the RIP, Union consumption decreased by 10%.

	2005	2006	2007	2008	RIP
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Total Union consumption in tonnes	7 861 796	6 983 467	8 023 633	7 638 439	7 054 327
<i>Index (2005=100)</i>	<i>100</i>	<i>89</i>	<i>102</i>	<i>97</i>	<i>90</i>

2. Volume, market share and prices of imports from Ukraine

- (52) The volumes, market shares and average prices of the imports from Ukraine developed as set out in the table below. The quantity and price trends were based on the information obtained from the questionnaire responses of the co-operating exporting producers, import statistics (Eurostat) and Ukrainian export statistics.

	2005	2006	2007	2008	RIP
Volume of imports (tonnes)	76 867	42 912	29 420	48 232	75 582
Market share	1%	0,6%	0,4%	0,6%	1,1%
Prices of imports (EUR/tonne)	123	139	145	259	230
<i>Index (2005=100)</i>	<i>100</i>	<i>113</i>	<i>118</i>	<i>211</i>	<i>187</i>

- (53) The volume of imports from Ukraine decreased consistently until 2007 but reached in the RIP almost the same level as in 2005. The Ukrainian market share increased slightly from 1% in 2005 to 1,1% in the RIP. The unit prices evolved positively from 123 to 230 EUR/tonne over the period considered. This increase in the RIP has to be seen in line with the worldwide evolution of price and in also the price of the main raw material.
- (54) For the purpose of calculating the level of price undercutting during the RIP, Union industry's ex-works prices to unrelated customers were compared with the CIF Union frontier import prices of the co-operating exporting producers in the country concerned, duly adjusted in order to reflect a landed price. On that basis, the comparison showed that imports from Ukraine were undercutting the prices of the Union industry by 22,5% on average during the RIP. An undercutting margin of 11% was still found to exist from Ukrainian exporters when the anti-dumping duty was added on top of their prices to the Union.

3. Imports from other countries

- (55) The volume of imports from other third countries during the period considered are shown in the table below. The following quantity and price trends are based on Eurostat.

	2005	2006	2007	2008	RIP
Volume of imports from Russia (tonnes)	328 972	217 539	35 852	136 984	184 170
Market share	4,2%	3,1%	0,4%	1,8%	2,6%
Prices of imports from Russia (EUR/tonne)	122	124	144	275	235
Volume of imports from Georgia (tonnes)	153 844	85 870	88 622	214 879	222 912
Market share	2,0%	1,2%	1,1%	2,8%	3,2%
Prices of imports from Georgia (EUR/tonne)	164	177	174	325	304
Volume of imports from Kazakhstan (tonnes)	0	4 845	112 239	81 410	100 761
Market share	0%	0,1%	1,4%	1,1%	1,4%
Prices of imports from Kazakhstan (EUR/tonne)	0	147	151	255	242
Volume of imports from all other countries (tonnes)	65 253	118 927	99 380	109 755	91 785
Market share	0,8%	1,7%	1,2%	1,4%	1,3%
Prices of imports from all other countries (EUR/tonne)	190	170	240	242	265

- (56) There was a significant price increase in the Union market from all third countries which occurred in 2008 and the RIP. It appeared that, apart from Russia, all the countries mentioned in the table above increased their export volumes to the Union during the period considered. In the case of Russian imports, they are subject to an anti-dumping fix duty of EUR 47,07 per tonne and were imported, as the Ukrainian imports, at the lowest price compared to all other exporting countries.

4. Economic situation of the Union industry

- (57) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.

4.1 Preliminary remarks

- (58) Since recourse was made to sampling for the investigation of injury, certain injury indicators such as production, production capacity, sales, market share, productivity and employment were analysed for the Union industry as a whole ('Union' in the tables below). Other injury indicators relating to the performances of individual companies, such as prices, stocks, costs of production, profitability, wages, investments, return on

investment, cash flow, ability to raise capital were examined on the basis of information collected at the level of the sampled Union producers ('S.P.' in the tables below).

4.2. Data relating to the Union industry as a whole

(a) Production

- (59) The Union industry's production decreased by 18% between 2005 and the RIP, i.e. from a level of around 7 million tonnes in 2005 to a level of around 5,8 million tonnes in the RIP. As regards the production for captive use, it remained modest during the period considered and did not affect the situation of the Union industry in particular during the RIP.

	2005	2006	2007	2008	RIP
Union production (tonnes)	7 133 844	6 359 967	7 146 911	6 454 234	5 843 181
<i>Index (2005 = 100)</i>	100	89	100	90	82
Union production used for captive transfers	210 437	176 413	185 223	138 733	119 053
As % of total production	2,9%	2,8%	2,6%	2,1%	2,0%

(b) Capacity and capacity utilisation rates

- (60) Production capacity remained by and large stable throughout the period considered. In line with the decrease in production, the resulting capacity utilisation decreased, from a level of 55% in 2005 to a level of 45% in the RIP. As already noted in the original investigation, capacity utilisation for AN can be affected by the production of other products which can be produced on the same production equipment. Therefore the trend in the capacity utilisation is less relevant for the assessment of the economic situation of the Union industry.

	2005	2006	2007	2008	RIP
Union capacity (tonnes)	13 059 281	12 824 281	12 820 594	13 069 317	13 077 281
Union capacity utilisation	55%	50%	56%	49%	45%

(c) Sales volume

- (61) Sales by the Union industry on the Union market decreased by 14% between 2005 and the RIP. This development has to be seen against the background of a shrinking Union consumption in the same period.

	2005	2003	2004	2008	RIP

Union sales volume (tonnes) to unrelated parties	5 365 834	4 756 093	5 495 037	5 157 788	4 605 629
<i>Index (2005 = 100)</i>	100	89	102	96	86
Union sales volume to unrelated parties in third countries (tonnes)	887 056	727 176	637 408	559 393	548 090
<i>Index (2005 = 100)</i>	100	82	72	63	62

(d) *Market share*

(62) The market share held by the Union industry remained stable from 2005 to 2008 but decreased by three percentage points between 2008 and the RIP.

	2005	2006	2007	2008	RIP
Union market share	68%	68%	68%	68%	65%
<i>Index (2005 = 100)</i>	100	100	100	100	96

(e) *Employment*

(63) The level of employment of the Union industry decreased by 8% between 2005 and the RIP.

	2005	2006	2007	2008	RIP
Union employment product concerned	3 627	3 578	3 458	3 494	3 354
<i>Index (2005 = 100)</i>	100	99	95	96	92

(f) *Productivity*

(64) During the period considered, the average output per person employed by the Union industry decreased by 11%. This is explained by the fact that the relative decrease in output bypassed the relative decrease in employment.

	2005	2006	2007	2008	RIP
Union productivity (tonnes per employee)	1 967	1 778	2 067	1 847	1 742
<i>Index (2005 = 100)</i>	100	90	105	94	89

(g) *Magnitude of dumping margin*

(65) As concerns the magnitude of the actual margin of dumping, given the currently small volume of imports from Ukraine, this impact is considered not to be significant and the indicator not relevant for the injury analysis.

4.3. Data relating to the sampled Union producers

(a) Sales prices and factors affecting domestic prices

- (66) The sampled Union industry producers' average net sales price increased substantially in 2008 and the RIP reflecting the prevailing favourable international market conditions of AN during that period.

	2005	2006	2007	2008	RIP
S.P. Unit price (EUR/tonne)	165	182	189	309	315
<i>Index (2005 = 100)</i>	<i>100</i>	<i>110</i>	<i>115</i>	<i>187</i>	<i>191</i>

(b) Stocks

- (67) The level of closing stocks of the Union industry decreased by 26% from 2005 to the RIP. A sharp increase registered in 2006 was due to steep decrease in sales volume between 2005 and 2006.

	2005	2006	2007	2008	RIP
S.P. Closing stocks (tonnes)	276 569	489 535	345 137	252 072	203 579
<i>Index (2005 = 100)</i>	<i>100</i>	<i>177</i>	<i>125</i>	<i>91</i>	<i>74</i>

(c) Wages

- (68) Between 2005 and the RIP, the average wage per employee increased by 6%, as the table below shows. In the light of the inflation rate and the overall reduced employment, this increase of wages is considered to be moderate.

	2005	2006	2007	2008	RIP
S.P. Average labour cost per employee (000 EUR)	40,4	41,2	43,3	45,0	43,0
<i>Index (2005 = 100)</i>	<i>100</i>	<i>102</i>	<i>107</i>	<i>111</i>	<i>106</i>

(d) Investments

- (69) The annual investments in the like product made by the five sampled producers developed positively during the period considered and increased by 70%. These investments related mainly to the modernisation of certain machinery. This shows that the Union industry is continuously willing to improve its competitiveness.

	2005	2006	2007	2008	RIP
S.P. Net investments (000 EUR)	46 668	52 191	64 319	73 948	79 379

<i>Index (2005 = 100)</i>	<i>100</i>	<i>112</i>	<i>138</i>	<i>158</i>	<i>170</i>
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(e) Profitability and return on investments

- (70) Profitability of the sampled producers improved significantly notably since 2006, as it reached the level of 28,1% on turnover during the RIP. The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the positive trend in profitability over the period considered.

	2005	2006	2007	2008	RIP
S.P. Profitability of EC sales to unrelated customers (% of net sales)	9,2%	7,9%	14,9%	25,3%	28,1%
<i>Index (2005 = 100)</i>	<i>100</i>	<i>85</i>	<i>162</i>	<i>274</i>	<i>304</i>
S.P. ROI (profit in % of net book value of investment)	35,2%	25,8%	41,1%	109,1%	114,1%
<i>Index (2005 = 100)</i>	<i>100</i>	<i>73</i>	<i>117</i>	<i>310</i>	<i>324</i>

(f) Cash flow and ability to raise capital

- (71) Cash-flow has increased significantly during the period considered and is in line with the development of the overall profitability during that period.

	2005	2006	2007	2008	RIP
S.P. Cash flow (000 EUR)	84 567	52 182	188 535	373 843	386 721
<i>Index (2005 = 100)</i>	<i>100</i>	<i>63</i>	<i>223</i>	<i>442</i>	<i>457</i>

- (72) The investigation did not reveal any difficulties encountered by the sampled Union producers in raising capital. In this respect, it should be noted that as several of these companies are part of large groups, they finance their activities within the group to which they belong either through cash-pooling schemes or through intra-group loans granted by the mother companies.

5. Conclusion

- (73) Between 2005 and the RIP, most injury indicators developed positively: unit sales prices and profitability improved substantially, the latter reaching a level of 28,1% during the RIP. Investments, return on investment and cash-flow evolved positively as well.

- (74) Although production and sales volumes decreased considerably over the period considered this has to be seen against a shrinking Union market in the order of minus 10%.
- (75) Overall, the situation of the Union industry has improved significantly as compared to its situation prior to the imposition of the anti-dumping measures on imports of AN from the country concerned in 2001.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. General

- (76) In the context of the likelihood of recurrence of injury, two main parameters were analyzed: (i) the likely export volumes and prices of the country concerned and (ii) the likely effect of projected volumes and prices from the country concerned on the Union industry.

2. Likely export volumes and prices of the country concerned

- (77) There is a known spare capacity of around 650 thousand tonnes available for the cooperating Ukrainian producers, representing 9% of the Union market, as mentioned in recital (37) above. This surplus of capacity indicates that Ukrainian producers have the possibility to quickly increase their current production and thus their exports of AN.
- (78) Moreover, given the relatively small size of their domestic market, Ukrainian producers are heavily depending on exports to third countries. As explained in recital (41) above, these exports were made at prices substantially lower than the prevailing market price in the Union.
- (79) Based on the above facts and considerations, the Union market would appear to be attractive for the Ukrainian exporting producers in terms of prices as compared to all other export markets. It can thus reasonably be expected that a considerable part of the volumes exported to third countries would be directed toward the Union market, should the measures be allowed to lapse. The proximity of the Union market, as compared to other export markets, would also render the Union market more attractive and would therefore increase the likelihood of a re-direction of current exports by Ukrainian producers from third countries to the Union.
- (80) Given the currently weak market position of Ukrainian products in the Union, the Ukrainian exporters would need to gain market share or broaden their customer base and are likely to manage this by offering AN at dumped prices as was established during the RIP.
- (81) On the basis of the above, it is therefore likely that significant volumes of AN produced in Ukraine would be redirected to the Union market at dumped prices substantially undercutting Union industry's prices, if measure are allowed to lapse.

3. Impact on the Union industry of the projected export volumes and price effects in case of repeal of measures

- (82) The investigation has shown that AN is a commodity product for which prices can significantly be affected by the presence of low-priced imports undercutting the Union industry's prices. In other words, the Union market for AN is a relatively volatile market. The favourable worldwide market conditions for AN prevailing during the period considered played an important role in keeping the prices at a high level and the applicable anti-dumping measures reduced the possibility of price distortion in the Union market. During that period, there was a tight balance between the supply and the demand which resulted in higher prices for all nitrogen fertilisers, which are commodity products. AN is also a commodity product whose pricing is influenced by numerous factors, such as the gas price, which has a considerable impact on the supply because it is the most important cost element, the weather conditions, the crops and grain stock levels, which overall result in a reduced or increased demand for fertilisers.
- (83) With particular regard to the Union market, it can be expected that the demand for AN will increase slightly from the level observed in the RIP. Given that the prices practiced by the Ukrainians were significantly undercutting the prices of the Union industry, the likely increase in import volumes from Ukraine would force the Union industry either to lower significantly its prices, thereby its profits, or to lose significant market share and thus revenues, or both. The successful restructuring process of the Union industry could probably only partially counterbalance such a likely price depression and the whole recovery process would be put in danger. Therefore, a deterioration of the Union industry's overall economic situation is likely to result from the repeal of the measures.

4. Conclusion on likelihood of recurrence of injury

- (84) The above facts and considerations lead to the conclusion that should the current measures be allowed to lapse, exports from the country concerned would likely occur in significant volumes and at dumped prices undercutting the Union industry's prices. This would in all likelihood have the effect of introducing a price-depressive trend on the market, with an expected negative impact on the economic situation of the Union industry. This would, in particular, impede the financial recovery that was achieved during the period considered, leading to a recurrence of injury.

G. UNION INTEREST

1. Introduction

- (85) It was examined whether compelling reasons existed that could lead to the conclusion that it is not in the Union interest to renew the anti-dumping measures in force. For this purpose, and in accordance with Article 21 of the basic Regulation, the impact of the renewal of the measures on all parties involved in this proceeding and the consequences of the expiry of the measures were considered on the basis of all evidence submitted.
- (86) In order to assess the impact of the possible maintenance of measures, all interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (87) It should be recalled that, in the original investigation, the adoption of measures was considered not to be contrary to the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping

measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

2. Interest of the Union industry

- (88) The Union industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of anti-dumping measures in 2001. In particular, the Union industry improved its profit situation between 2005 and the RIP considerably and restructured itself successfully.
- (89) It can thus reasonably be expected that the Union industry will continue to benefit from the measures currently imposed and further recover by maintaining and stabilising its profitability. Should the measures not be maintained, it is likely that increased imports at dumped prices from the country concerned will occur, thereby causing injury to the Union industry by exerting a downward pressure on the sales prices which will negatively affect its currently positive financial situation.

3. Interest of importers

- (90) As mentioned in recital (14) above, no importer indicated its willingness to be included in the sample and to provide the basic information required in the sampling form. It is recalled that in previous investigations it was found that the impact of the imposition of measures would not be significant because, as a rule, importers do not only deal in AN but also, to a significant extent, in other fertilisers. The lifting of anti-dumping measures on other fertilisers can only reinforce the foregoing. In that context, anti-dumping measures applicable on imports of urea originating in Russia and in Belarus, Croatia, Libya and Ukraine were lifted in August 2007 and March 2008 respectively¹⁴. However, in the absence of cooperation of importers and thus of any conclusive evidence allowing to assess any significant negative consequences, it was concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.
- (91) There is no reliable information available indicating that the maintenance of the measures will have a significant negative effect on importers or traders.

4. Interest of users

- (92) The users of AN in the Union are farmers. In the original investigation, it was concluded that given the small incidence of AN on the farmers activity, any increase in these costs was unlikely to have a significant adverse effect on them.
- (93) Within the present investigation two farmer associations submitted comments advocating for the termination of the measures. They mainly claimed that the Common Agricultural Policy reform of 2003 reduced the use of market intervention mechanism and broke the link between Union support and production. Consequently this process of liberalisation forced the Union farmers to operate at world market conditions. Only the free choice of AN suppliers could prevent prices of farm products to increase substantially.

¹⁴ OJ L 198, 31.7.2007, p.4 and OJ L 75, 18.3.2008, p. 33.

(94) However, the possible continuation of the current anti-dumping measures will not prevent users to choose freely their AN suppliers, but it will maintain a fair level playing field in the Union market where effective competition will be enhanced. Therefore, based on the above, it can be concluded that the continuation of the anti-dumping measures against Ukraine will not have significant adverse effects on the users of the product concerned.

5. Conclusion on Union interest

(95) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

H. ANTI-DUMPING MEASURES

(96) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. The comments made were taken duly into consideration where warranted.

(97) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of AN originating in Ukraine should be maintained. It is recalled that these measures consist of specific duties.

(98) As indicated in recital (28), the Ukrainian import prices for natural gas have shown convergence with gas prices prevailing on the Union market in the last quarter of the RIP. Therefore, the potentially injurious effects of dumping may be affected by the impact on export prices of the production costs increases caused by the evolution of domestic gas prices should the latter prove to be of lasting nature. Therefore, it is considered prudent to limit the maintenance of the measures to two years,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80% by weight, 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 Ukraine.

2. The rate of anti-dumping duty shall be a fixed amount of euro per tonne as shown below:

Product description	CN code	TARIC code	Amount of duty (Euro per tonne)
Ammonium nitrate other than in aqueous solutions	3102 30 90	-	33,25
Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising	3102 40 90	-	33,25

substances, with a nitrogen content exceeding 28% by weight			
Double salts and mixtures of ammonium sulphate and ammonium nitrate - Solid fertilisers with an ammonium nitrate content exceeding 80% by weight	3102 29 00	10	33,25
Double salts and mixtures of calcium nitrate and ammonium nitrate - Solid fertilisers with an ammonium nitrate content exceeding 80% by weight	3102 60 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight	3102 90 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, with no phosphorus and no potassium content	3105 10 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of less than 3% by weight	3105 10 00	20	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 3% by weight or more but less than 6% by weight	3105 10 00	30	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 6% by weight or more but less than 9% by weight	3105 10 00	40	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 9% by weight or more but not exceeding 12% by weight	3105 10 00	50	29,26
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of less than 3% by weight	3105 20 10	30	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content	3105 20 10	40	31,25

evaluated as K ₂ O of 3% by weight or more but less than 6% by weight			
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of 6% by weight or more but less than 9% by weight	3105 20 10	50	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of 9% by weight or more but not exceeding 12% by weight	3105 20 10	60	29,26
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ of less than 3% by weight	3105 51 00	10	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ of 3% by weight or more but less than 6% by weight	3105 51 00	20	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 6 % by weight or more but less than 9% by weight	3105 51 00	30	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ of 9% by weight or more but not exceeding 10,40% by weight	3105 51 00	40	29,79
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ of less than 3% by weight	3105 59 00	10	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ of 3% by weight or more but less than 6% by weight	3105 59 00	20	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ of 6% by weight or more but less than 9% by weight	3105 59 00	30	30,26

Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a phosphorus content evaluated as P ₂ O ₅ of 9% by weight or more but not exceeding 10,40% by weight	3105 59 00	40	29,79
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a potassium content evaluated as K ₂ O of less than 3% by weight	3105 90 91	30	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a potassium content evaluated as K ₂ O of 3% by weight or more but less than 6% by weight	3105 90 91	40	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a potassium content evaluated as K ₂ O of 6% by weight or more but less than 9% by weight	3105 90 91	50	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80% by weight, and a potassium content evaluated as K ₂ O of 9% by weight or more but not exceeding 12% by weight	3105 90 91	60	29,26

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93¹⁵, the amount of anti-dumping duty, calculated on the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. It shall be in force for a period of two years.

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

Done at Brussels,

*For the Council
The President*

¹⁵ OJ L 253, 11.10.1993, p. 40