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COUNCIL REGULATION (EC) No 658/2002
of 15 April 2002
imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia

(OJ L 102, 18.4.2002, p. 1)

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COUNCIL REGULATION (EC) No 658/2002

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imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]), hereinafter referred to as 'the basic Regulation' and in particular Article 11(2) and (3) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Previous investigations**

(1) In May 1994, by Decision 94/293/EC ([2]), the Commission accepted undertakings with regard to imports of ammonium nitrate originating in Lithuania and Russia, following a regional anti-dumping proceeding concerning imports into the United Kingdom. The undertaking accepted from the Russian authorities was, however, breached within the first year of operation.

(2) In June 1994, a Community-wide anti-dumping investigation concerning ammonium nitrate originating in Lithuania and Russia was initiated subsequent to a complaint lodged by the European Fertiliser Manufacturers Association (EFMA). By Commission Decision 95/344/EC ([3]), the proceeding was terminated in respect of imports from Lithuania and in August 1995, the Council, by Regulation (EC) No 2022/95 ([4]), imposed a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia. The measures applying to imports originating in Russia consisted of a variable duty equal to the difference between ECU 102,9 per tonne net of product ('minimum import price' or 'MIP') and the net cif price, Community frontier before customs clearance, in all cases where the latter was lower.

(3) Pursuant to a further investigation, which established that these measures were being absorbed, the measures were changed, in March 1998, by Regulation (EC) No 663/98 ([5]), to a specific duty of ECU 26,3 per tonne.

2. **Investigations concerning other countries**

(4) In October 1999, an anti-dumping investigation was initiated concerning imports into the Community of ammonium nitrate originating in Lithuania, Poland and Ukraine ([6]). It showed that imports of ammonium nitrate originating in Poland and Ukraine were dumped and caused material injury to the Community industry, whereas imports originating in Lithuania were found not to be dumped. Consequently, by Regulation (EC) No 132/2001 ([7]), definitive anti-dumping measures were imposed on imports of ammonium nitrate originating in Poland and Ukraine,

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
([2]) OJ L 129, 21.5.1994, p. 24.
([3]) OJ L 198, 23.8.1995, p. 27.
([4]) OJ L 198, 23.8.1995, p. 1.
([5]) OJ L 93, 26.3.1998, p. 1.
([6]) OJ C 311, 29.10.1999, p. 3.
([7]) OJ L 23, 25.1.2001, p. 1.

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while the proceeding was terminated in respect of imports originating in Lithuania. Duties were imposed in the form of a specific duty per tonne, in order to ensure the efficiency of the measures and to discourage any price manipulation.

3. **Present investigation**

3.1. *Request for review*

(5) Following the publication, on 24 February 2000, of the notice of the impending expiry of the anti-dumping measures in force on imports of ammonium nitrate originating in Russia ([1]), the Commission received a request for an expiry and an interim review pursuant to Article 11(2) and (3) of the basic Regulation, lodged by EFMA on behalf of producers representing a major proportion of Community production of ammonium nitrate ('applicant Community producers'). The request for an expiry review alleged that injurious dumping of imports originating in Russia would be likely to continue or to recur if measures were allowed to expire. The applicant's request for an interim review was based on the grounds that the current measures did not appear to be sufficient to counteract the injurious effects of dumping.

3.2. *Notice of initiation*

(6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation pursuant to Article 11(2) and (3) of the basic Regulation by a notice published in the *Official Journal of the European Communities* ([2]).

3.3. *Period of investigation*

(7) The investigation period ('IP') for the examination of continuation and recurrence of dumping and injury covered the period from 1 July 1999 to 30 June 2000. The examination of trends relevant for the assessment of continuation and/or recurrence of injury covered the period from 1 January 1996 up to the end of the IP ('period under review').

3.4. *Parties concerned by the investigation*

(8) The Commission officially advised the applicant Community producers, the exporting producers in Russia, the importers, users and associations known to be concerned, and the representatives of the exporting country concerned of the initiation of the review. The Commission sent questionnaires to the exporting producers, Community producers, importers, users and associations known to be concerned and to those who made themselves known within the time limit set in the notice of initiation.

(9) In order to allow Russian exporting producers to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned.

(10) Nine Community producers, one analogue country producer, two importers, one importers' association, and two users' associations replied to the questionnaires. With respect to the exporting country concerned, only one reply to the questionnaire was received.

([1]) OJ C 52, 24.2.2000, p. 3.
([2]) OJ C 239, 23.8.2000, p. 10.

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3.5. *Verification of information received*

(11) The Commission sought and verified all information it deemed necessary for the purpose of a determination of the continuation or recurrence of dumping and injury and of the Community interest. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request and hold a hearing.

(12) Verification visits were carried out at the premises of the following companies:

Community producers:

— Grande Paroisse SA, France,

— Hydro Agri France, France,

— Kemira Ince Ltd, United Kingdom,

— Terra Nitrogen, United Kingdom;

analogue country producer:

— Mississippi Chemical Corporation, Yazoo City, USA.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(13) The product under consideration is the same as in the previous investigation, i.e. ammonium nitrate ('AN' or 'product under consideration'), a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid and the nitrogen content exceeds 28 % by weight in prilled or granular form.

(14) The product concerned currently falls within CN codes 3102 30 90 (ammonium nitrate other than in aqueous solutions) and 3102 40 90 (mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight).

2. Like product

(15) As both the previous investigation and the investigation concerning other countries have shown, AN is a pure commodity product and its basic chemical characteristics are comparable whatever the country of origin. There are two different types of AN: granular and prilled. Granular AN has a larger diameter and therefore has better spreading characteristics. The investigation has shown that imports of AN originating in Russia are prilled and that the majority of AN produced by the Community industry is granular. However, since granular and prilled AN have the same chemical characteristics and end use and are perceived by users as being interchangeable, they are to be regarded as two different types of the same product.

(16) Therefore, the product produced and sold in the Community by the applicant Community producers is considered to be a like product to that produced in Russia and sold domestically or exported to the Community. The same is true with regard to AN sold on the domestic market of the analogue country.

C. DUMPING AND LIKELIHOOD OF A CONTINUATION OF DUMPING

(17) In accordance with Article 11(2) of the basic Regulation, it is necessary to examine whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.

(18) In examining whether there is a likelihood of a continuation of dumping, it is necessary to verify whether dumping exists at present and whether any such dumping is likely to continue.

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1. **Dumping during the IP**

1.1. *Volume of exports to the Community during the IP*

(19) Exports of AN from Russia amounted to 282 000 tonnes during the IP, i.e. about 20 % of total Community imports of AN and about 5 % of Community AN consumption. These imports are only slightly below the level found in the previous investigation period, i.e. 340 000 tonnes between April 1993 and March 1994.

1.2. *MET and IT*

(20) Claims for MET and/or IT were received from three exporting producers. As two of these companies later failed to submit their reply to the Commission's questionnaire within a reasonable period of time, it was considered appropriate not to process further their MET/IT claim forms. Indeed, in the absence of the necessary data for carrying out a dumping calculation, the claims for MET and IT could not be considered. These companies were therefore considered as non-cooperating with the investigation and were subsequently informed that the findings would be based on the facts available, in accordance with Article 18 of the basic Regulation.

(21) The third company having submitted an MET/IT claim form was found to have no exports of the product concerned to the Community during the IP. In the absence of any actual export sales data for the IP, no dumping calculation was possible in the context of either the expiry review or the interim review. Consequently, neither MET nor IT could be considered.

1.3. *Analogue country*

(22) Since imports from Russia fall under Article 2(7)(a) of the basic Regulation except where MET is granted, normal value has to be based on information obtained in an appropriate market economy third country. In the notice of initiation, the Commission suggested Poland as an appropriate analogue country because it was used as an analogue country in other investigations concerning the same product, and the production processes and access to raw materials are comparable to those prevailing in Russia.

(23) Comments were received by the European Fertiliser Import Association (EFIA) objecting to this choice. Their main objection was that Poland has very high domestic fertiliser prices due to its high level of protection against fertiliser imports and also it has the highest gas prices in Central Europe because of its monopolistic state-owned gas distribution system. As an alternative, EFIA proposed Lithuania on the grounds of its close proximity and similar manufacturing conditions to Russia, its absence of barter trade and the fact that the sole Lithuanian producer purchases gas from a Russian supplier, which also supplies the Russian producers, at prices which vary in accordance with the published cif northern Europe price for ammonia.

(24) However, neither the known Polish producers nor the sole Lithuanian producer were willing to cooperate.

(25) The Commission then approached producers in Australia and the USA as suggested by EFMA. As only one producer from each of these countries was willing to cooperate, a further analysis was carried out into the importance of their respective domestic sales in terms of domestic market share, and into the representativeness of their domestic sales volume compared to Russian exports to the Community. This analysis showed that, whereas both producers had representative domestic sales, the Australian producer did not face any significant competition in its domestic market. Although the USA producer also had significant domestic sales, it faced price competition from both domestic and foreign compa-

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nies. Consequently, the USA was selected as the most appropriate analogue country.

(26) The sales of AN by the USA producer on its domestic market were examined and found to be representative in comparison with Russian export sales of AN to the Community.

(27) Following disclosure, EFIA argued that the lack of cooperation from the sole Lithuanian producer should not have prevented the Commission from using Lithuania as the analogue country, as it had relevant information from its recent anti-dumping proceeding concerning imports of ammonium nitrate from Lithuania, Ukraine and Poland ([1]). There was indeed an overlap of the IPs in the two proceedings. However, this overlapping period was limited to the first three months of the IP for the current proceeding. In accordance with Article 6(1) of the basic Regulation, for a representative finding, the IP should normally cover a period of six months immediately prior to the initiation of the proceeding. In these circumstances it was considered that data from the first three months of the IP would not be sufficiently representative for the seasonal and volatile AN market. In addition, it should be stressed that using information received in the context of a given proceeding for a precise purpose, in another proceeding for a different purpose, where the party concerned has moreover expressed its unwillingness to cooperate with the second investigation, would be contrary to the provisions of Article 19(6) of the basic Regulation. The argument was, therefore, rejected.

1.4. *Normal value*

(28) As stated above, normal value was calculated on the basis of the data verified at the premises of the USA company, which cooperated fully with the investigation.

(29) In order to establish whether sales in the USA market of the like product were made in the ordinary course of trade, the domestic selling price at an ex-works level was compared to the full cost of production (i.e. the cost of manufacturing plus SG&A expenses). As the weighted average sales price was higher than the weighted average unit cost, normal value was established on the basis of the weighted average domestic selling price for the IP.

(30) Both EFIA and the cooperating Russian exporter argued that a downward adjustment to constructed normal value should have been made due to high gas prices paid by USA producers. Firstly, it should be noted that normal value was not constructed, but was established on the basis of profitable sales prices in the USA domestic market. Secondly, although gas is an important cost element in the production of AN, it was noted that the domestic AN market in the USA is driven by competition and that there are significant imports. As such, the domestic prices of AN are to a significant extent market-driven rather than cost-driven. No evidence was obtained with regard to the extent to which higher gas prices in the USA market would have affected the domestic sales prices of AN during the IP. Finally, even if high gas prices were deemed to have affected the domestic sales prices of AN to a quantifiable extent, this would have had no impact on the definitive duty, since the dumping margin found would not have fallen below the injury margin. In these circumstances, the argument was rejected.

1.5. *Export price*

(31) As the sole cooperating exporting producer had no exports of the product concerned to the Community during the IP, the export price was established on the basis of the available data, in this case, Eurostat statistics of Community frontier cif prices, in accordance with Article 18 of the basic Regulation.

([1]) OJ L 23, 25.1.2001, p. 1.

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1.6. *Comparison*

(32) The normal value was compared to the export price on an ex-works basis. This method was used in order to take into account the differences in internal transport costs in market and non-market economy countries incurred in particular for a bulk product such as the product under consideration, for which transport costs account for a very high proportion of the selling price. The appropriate adjustments were made, therefore, to the cif export price in respect of the costs for transport from ex-works to port, port services, insurance and freight costs.

(33) The transport costs for AN in the USA were found to be market-driven and there is competition between transport companies. Since the USA is a competitive market, rail fares established during the investigation for the product under consideration in the USA were applied proportionately to the Community frontier export price of Russian exporting producers, on the basis of the weighted average distance to the Community border estimated for all 'export-oriented' (see recital 37) Russian producers.

1.7. *Dumping margin*

(34) In accordance with Article 2(11) and (12) of the basic Regulation, the country-wide dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price at an ex-works level. The country-wide dumping margin expressed as a percentage of the 'cif-Community-border' price is 115,8 %.

2. **Likelihood of a continuation of dumping**

(35) As indicated in recital 34, exports to the Community were found to be made at dumped prices during the IP. Moreover, the dumping margin found was much higher than that of the previous investigation.

(36) In examining whether dumping was likely to continue at substantial levels and in significant quantities, a number of sources of information were analysed. First, information submitted by the only cooperating Russian producer was used. However, this producer, although exporting to third countries, did not have any export sales to the Community. Second, in the absence of any cooperating company with exports to the Community market, in accordance with Article 18(1) of the basic Regulation, the analysis was also based on Eurostat data as well as information provided in the review request which permitted projections to be made of likely future export volumes to the Community.

(37) The total capacity for AN production in Russia is estimated about 8 900 000 tonnes (i.e. 1,6 times the Community consumption for the IP), of which the production capacity of the 'export-oriented' producers (i.e. generally those with reasonable access to a port) is estimated at a minimum of 4 500 000 tonnes. Although capacity utilisation rates vary significantly between different companies and from year to year, local consumption is estimated at only about 2 200 000 tonnes. Taking into account the current level of Russian exports to other third countries (i.e. 2 189 000 tonnes in 1999), this means that there is still significant capacity available for production for export and this could potentially be used to increase further the existing exports to the Community, in the event of expiry of the measures.

(38) Furthermore, it is recalled that as recently as 1996, Russian exports to the Community accounted for 40 % of total Russian exports ([1]) of the product under consideration. This, in conjunction with the fact that a number of third countries (USA, Australia, Poland and Hungary) adopted commercial defence

([1]) *Source*: Eurostat — Comext 'Russian exports'.

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measures against imports from Russia, that China, since 1997, actively pursued a strategy of replacement of imports by domestic production, and that domestic consumption in Russia is likely to stay at relatively low levels in the near future, means that Russian producers would be more likely to direct any additional production to the Community market.

(39) Having regard to the current price levels on the Community market, it is likely that the Russian exporting producers would continue to adopt a policy of dumped prices in order to regain their lost market shares. This is also confirmed by the Russian exporters' price behaviour on their other most important export markets besides the Community and the USA.

(40) In addition, even though the world fertiliser consumption is forecast to increase by the year 2004, the bulk of the increase is expected to take place in Asia, mostly China and India. However, China and India have developed massive capacities for fertiliser production in order to reduce the level of imports. More particularly, China imposed a ban on nitrogenous fertiliser imports, including AN.

(41) As mentioned in recital 21, the one exporting producer which cooperated with the investigation had no exports to the Community during the IP. Although this producer had significant production capacity during the IP, it had limited unused capacity and therefore any substantial production for export to the Community in the event of expiry of the measures would have necessitated a reduction in sales to other markets. Given the substantial volume of exports and margin of dumping during the IP from other exporters, even if this exporter might sell to the Community at non-dumped prices following any expiry of the measures, this would not have altered the finding with regard to the likelihood of a continuation of dumping for the country as a whole.

(42) EFIA argued that, since the recent terrorist attacks in the USA, all related costs, such as insurance, transport, unloading, storage and handling, are increasing and that this will be reflected in higher prices of imported fertiliser, as importers have to recover these costs as well. However, this argument was unsubstantiated, as no evidence was provided to show that this would have a greater impact on export prices from Russia than domestic prices in the USA. In addition, developments after the IP can only be taken into consideration if it can be demonstrated that these developments would make the results of the investigation unsuitable and the planned imposition of an anti-dumping duty manifestly inappropriate. This was not found to be the case and the argument was therefore rejected.

3. **Conclusion**

(43) Nothing was found during the investigation to suggest that the dumping margin or volume of dumped exports determined for the investigation period would disappear or even decrease should the measures be allowed to expire. Moreover, it was found that Russian producers had substantial spare capacities and that the removal of measures would likely result in further dumped exports to the Community. It was therefore concluded that, should the measures expire, dumping at a substantial level and in increased volumes would very likely continue.

D. **DEFINITION OF THE COMMUNITY INDUSTRY**

(44) Out of the 11 applicant Community producers, one did not reply to the questionnaire (Sefanitro) and one did not submit sufficient information (Chemical Industries of Northern Greece). Consequently, both these producers were considered to be non-cooperating and therefore were not regarded as being part of the Community industry. The investigation established that the remaining nine cooperating producers represented more than

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85 % of the Community production of AN during the IP. Therefore they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

E. ANALYSIS OF THE SITUATION IN THE COMMUNITY MARKET

1. Preliminary remark

(45) The introduction of the anti-dumping measures on imports of AN originating in Russia in 1995 in a first stage considerably improved the economic situation of the applicant Community producers, in particular in terms of better financial results, due to the increase in prices between 1995 and 1996.

2. Consumption

(46) Community consumption was established on the basis of the sales volume of the Community industry on the Community market, as reported in the questionnaire replies, the sales volume on the Community market of the other Community producers (both non-cooperating and non applicants), as reported in the complaint and the import volumes into the Community from the country concerned and all other third countries, on the basis of Eurostat.

On this basis, Community consumption decreased by 13 % between 1996 and the IP, i.e. from 6 328 000 tonnes in 1996 to 5 525 000 tonnes in the IP. Consumption decreased particularly between 1996 and 1997, and then remained relatively stable until the end of the IP.

3. Imports from the country concerned

3.1. *Volume and market share*

(47) Total imports of AN in the Community followed a downward trend during the period under review (– 28 %) even though they increased slightly between 1999 and the IP.

With respect to the volume of the Russian imports, it decreased significantly over the period under review, in particular as from 1997. This trend seems to be the result of the reopening of the investigation published in 1997, the conclusions of which published in 1998 led to the amendment of the anti-dumping measures in that year, and of the significant increase of the imports from certain other third countries, which have benefited from the imposition of anti-dumping duties on Russian imports. Between 1996 and the end of the IP, Russian imports went down by 74 %, while other imports increased by 30 %.

(48) The market share of the imports from Russia decreased by 12 percentage points during the period under review. However, during the IP, it still represented 5 % of Community consumption and a significant part of overall imports, namely 20 %.

3.2. *Prices*

(49) After the imposition of the measures in 1995, the average prices of the imports concerned, as reported by Eurostat, fell by 45 %, between 1996 and the IP.

3.3. *Price comparison*

(50) The Commission has examined whether the exporting producers in the country concerned undercut the prices of the Community industry during the IP. For this analysis, the cif prices of the exporting producers have been duly adjusted to a Community frontier ex quay custom duty paid level (DEQ) and compared, at the same level of trade, to Community producers' ex-works prices, both for bagged products. This was done as imports are always bagged, whereas the Community industry sold its

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products both in bagged and in bulk form. Thus, adjustments were made where appropriate. In addition, the investigation has shown that granular products were on average sold at a higher price than prilled products. Therefore, an allowance of EUR 3,1 per tonne was made for the price comparison. This amount is the average price difference between granular and prilled AN sold by the Community industry during the investigation period.

(51) EFIA argued that an adjustment should have been made for the lower quality of the product imported from Russia. However, the investigation established that the quality of the product concerned originating in Russia has improved in recent years and has been upgraded to the higher European standards. Therefore, the argument has been rejected.

(52) The country-wide price difference found on this basis, expressed as a percentage of the Community producers' prices, is 27,7 %. This difference still amounts to 3,2 % when the anti-dumping duty is added to the export price. Furthermore, prices of the Community industry were depressed, as the industry incurred losses of 18 %.

4. **Economic situation of the Community industry**

4.1. *Production*

(53) The Community industry's production decreased by 17 % between 1996 and the IP, i.e. from 4 713 000 tonnes to 3 903 000 tonnes. A slight increase took place between 1997 and 1998, but the production fell back again in 1999.

4.2. *Capacity and capacity utilisation*

(54) It should be noted that capacity and capacity utilisation were not found to be meaningful indicators for this type of production and industry since they are affected by the fact that also other products are produced on the same production equipment. Indeed, based on natural gas transformed into ammonia, various different products are produced using the same production lines. The total production capacity of the Community industry was relatively stable over the period under consideration. Capacity utilisation decreased from 56 % in 1996 to 46 % in 1997 and subsequently remained stable.

4.3. *Sales in the Community*

(55) The sales volume of the Community industry decreased from 4 238 000 tonnes in 1996 to 3 766 000 tonnes in the IP, i.e. by 11 %. The decrease was most notable between 1996 and 1997, when the sales decreased by 15 %.

4.4. *Stocks*

(56) The level of stocks is not considered to be a relevant injury indicator owing to the seasonal nature of the sales and the fact that AN is partly stored by the producers themselves and partly by the cooperatives of farmers.

4.5. *Market share*

(57) The market share of the Community industry decreased between 1996 and 1997 and then increased to gain finally 1,2 percentage points between 1996 and the IP. In the IP, it was 68,2 % compared to 67 % in 1996.

4.6. *Prices and factors affecting prices*

(58) The Community producers' average net sales price decreased from ECU 133/tonne in 1996 to ECU 99/tonne in the IP, i.e. by 25 %. The fall was particularly marked between 1996 and 1999, (i.e. – 28 %). Besides the price depressive effect of the imports

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concerned, other factors that may have contributed to the fall in prices were the decrease in demand on the Community market between 1996 and 1997, imports from countries covered by Regulation (EC) No 132/2001 and the Chinese ban in nitrogen fertiliser imports imposed in 1997.

4.7. *Profitability and return on investment*

(59) The weighted average profitability of the Community industry deteriorated by 37 percentage points between 1996 and the IP from 18,6 % to – 18,0 %). This trend has to be seen in the light of the price evolution which showed a similar pattern and of the natural gas price which increased as from the third quarter of 1999.

During the period under review, the return on investment followed a trend similar to the one of profitability.

4.8. *Cash flow*

(60) The cash flow generated by the Community industry in relation to sales of AN followed very closely the profitability trend.

4.9. *Ability to raise capital*

(61) Due to the structure of the complainant companies, i.e. the fact that the fertiliser producers are a part of large chemical groups also dealing with other products, it was not possible to establish the ability to raise capital for the product under consideration only, and it was therefore considered as not being a meaningful indicator to measure injury.

4.10. *Employment and wages*

(62) Employment in the Community industry decreased, between 1996 and the IP, from 1 986 to 1 608 employees, i.e. a decrease of 19 %. With respect to overall wages, they followed a similar decline as compared to the decrease of the number of persons employed.

4.11. *Investments*

(63) Investment figures remained relatively stable over the period under consideration. These investment figures include investments relating to production steps preceding the production of AN. The most important investments between 1996 and the IP were investments in production facilities for nitric acid, which is a raw material for the production of AN, but which may also be used for other purposes such as the production of urea ammonium nitrate solutions.

4.12. *Magnitude of the dumping margin*

(64) The impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, cannot be considered to be negligible.

5. **Conclusion**

(65) As explained under recital 45 the introduction of the anti-dumping measures on imports of AN originating in Russia in 1995 in a first stage considerably improved the economic situation of the applicant Community producers. However, starting from the year 1997, the situation deteriorated again. Except market shares, which slightly increased on account of price decreases, all other injury indicators, i.e. production, sales volumes, prices, profitability, return on investment, cash flow and employment, developed negatively. In particular, the sharp decrease in the sales prices of the Community industry had a negative effect on its profitability. As confirmed by Regulation

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(EC) No 132/2001, this development should be seen in the light of the increased presence in the Community market of imports from these third countries, which have gained more than half of Russian market shares and significantly undercut the prices of the Community industry.

(66) In this respect it should be noted that Russian prices, on the basis of Eurostat and excluding the specific duty imposed in 1998, were below the sales prices of Poland and Ukraine during the whole period under review (27 % below during the IP), with the exception of the year 1997, when they were at the same level.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. Changes with respect to dumping and the situation of the Community industry

1.1. *Change in circumstances with respect to dumping*

(67) The investigation has shown that the dumping margin has increased significantly compared to the dumping margin calculated in the previous investigation which led to the measures in force. In fact, the dumping margin calculated in the previous investigation was 41,9 % which is substantially lower than that calculated in the current investigation (115,8 %).

1.2. *Change in circumstances with respect to the situation of the Community industry*

(68) The investigation has shown that significant losses have been suffered by the Community industry between 1998 and the IP. The situation is even worse than it was during the investigation which led to the measures in place, since, for instance, the level of losses was almost three times higher during the IP of the current investigation than it was in the investigation period of the previous investigation, conducted under Regulation (EC) No 2022/95.

(69) Nearly throughout the entire period of the existence of the duty on imports from Russia, substantial price undercutting took place. In March 1998 the variable duty had to be replaced by a specific duty because measures proved not to be effective. Moreover, as from July 1998, the export prices at duty paid level (i.e. including the specific duty) were below the non-injurious price of the Community industry which was established in the original investigation and which determined the level of the duty.

2. Likelihood of recurrence of injury

(70) In order to assess the likely effect of the expiry of the measures in force, the following elements were considered.

(71) A pricing behaviour by Russian exporting producers, as evidenced by low prices on third country markets and on the Community market, coupled with their ability to deliver additional significant quantities of AN, would in all likelihood have a general price depressing impact on what is a very price-sensitive commodity market should measures be repealed. Russian exporting producers would in all likelihood take over from the Community industry significant additional market shares. This in turn would lead to a recurrence of injury from imports originating in Russia in terms of decreasing sales prices of the Community industry, sales volumes and market shares as well as the consequent impact in terms of profitability.

(72) The Community industry is in a difficult situation having regard in particular to its profitability. Indeed, although the situation of the Community industry, following the imposition of the measures under consideration, markedly improved in the first year of application of the measures, it deteriorated again, in particular as from 1997, due to the injurious dumping of other

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countries' imports, as established in Regulation (EC) No 132/2001 and is now even worse. In this regard, should the measures against Russia be repealed, not only would the situation of the Community industry again be put at risk, but also the benefit which the Community industry should derive from the measures imposed against other countries could be weakened or even nullified.

(73) EFIA argued that the price decrease experienced in the Community market as from 1997 is due to a number of factors, amongst which the Chinese import ban on nitrogen fertilisers, and that it cannot be attributed to the Russian price behaviour. However, even if other factors, such as the decrease in demand on the Community market between 1996 and 1997 and the Chinese strategy, may be at the origin of a price decrease, the Russian prices decreased far more than the prices of all other exporters, and were far below other prevailing non-dumped import prices from countries such as Lithuania, Egypt and Bulgaria. This may be explained by the fact that Russia lost one of its most important export markets given that Russian exports to China amounted to more than 1 000 000 tonnes, i.e. 90 % of the Chinese AN imports in 1996, the year before the ban was imposed.

(74) It was also claimed by the same importers' association that, since the deterioration of the situation of the Community industry has already been attributed to Poland and Ukraine in the context of another investigation, leading to the imposition of anti-dumping measures, it cannot be considered in relation to the imports of AN originating in Russia as well. In this respect, it should be recalled that the scope of an expiry review is to analyse the situation of the Community market as against the likelihood that dumping and injury would continue or recur should the measures in force be removed. Consequently, with regard to the current expiry investigation, the fact that the deterioration of the Community industry has been attributed during a certain period to the presence of other third countries, namely Poland and Ukraine, in the context of another anti-dumping proceeding, does not affect the analysis of the future behaviour in the Community market of Russian exporters and its likely effect on the situation of the Community industry.

(75) EFIA finally claimed that the decrease of the Community industry's profitability is mainly due to the price increase of natural gas, and that an adjustment should have been made to the non-injurious price to take this into account.

As mentioned under recital 59, it was considered that this gas price increase may have had an influence on profitability. However, profitability is only part of the analysis of the situation of the Community industry and, as explained under recital 65, many other indicators developed negatively over the period under review. It was therefore considered that the gas price evolution should be seen rather as an aggravating factor than as a cause of the injury, given that the price pressure found did not allow the Community industry to pass on the increase via its sales prices.

Finally, the analysis of the gas price evolution in the Community over recent years shows it to be very volatile and no conclusions can be drawn with respect to future development. Consequently, it was concluded that there are no special circumstances on the Community market that justify an adjustment.

(76) On the basis of the above, it is concluded that, should the measures be repealed, injury is likely to recur.

G. **COMMUNITY INTEREST**

1. **Introduction**

(77) According to Article 21 of the basic Regulation, the Commission examined whether a prolongation and amendment of the existing

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anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users of the product under consideration. In order to assess the likely impact of maintaining or not maintaining the measures, the Commission requested information from all interested parties mentioned above.

(78) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, would allow the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(79) On this basis it was examined whether, despite the conclusions on the likelihood of a recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. **Interest of the Community industry**

(80) It is considered that if anti-dumping duties are not maintained, injurious dumping is likely to recur and that the situation of the Community industry, which worsened during the period under review, would further deteriorate.

(81) The Community industry has proved to be a structurally viable industry, able to adapt to the changing conditions on the market. This has been shown in particular by the industry's profits achieved until 1997 and its investment in state of the art production capacity. The success of these efforts strongly depends on the existence of a fair competition on the Community market.

(82) It can reasonably be expected that the Community industry will benefit from the measures imposed by Regulation (EC) No 132/2001 provided that no other source of injurious dumping undermines these measures. As outlined above, since there is a likelihood of a recurrence of injurious dumping from Russia, it is in the interest of the Community industry to maintain the anti-dumping measures on imports of AN originating in Russia.

3. **Interest of importers**

(83) Questionnaires and information were received from the EFIA (representing 24 importers) and two importers (out of the 48 questionnaires sent).

(84) The replies received from the two cooperating importers confirmed the price decrease as from 1998 and the fact that the Community producers had to follow this trend in order to ensure competitiveness. One of them also underlined the necessity to maintain the European infrastructure in order to guarantee good conditions for the supply of the European market, whereas the association was against the continuation of the measures.

(85) In view of the low level of cooperation and the fact that importers generally deal with a wide range of fertilisers, of which AN is only one, it was concluded that any negative impact of the continuation of measures on importers would not be a compelling reason not to impose the continuation of measures.

4. **Interest of users**

(86) The users of the product concerned are farmers. The Commission sent questionnaires to six users' associations at European and national levels. Two of them replied to the questionnaire. Both are, as a matter of principle, against the continuation of the measures.

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(87) One users' association argued that the analysis of the interest of the users should be closely linked to the British users' interest, on the grounds that the highest level of consumption of AN in the Community is in the United Kingdom. However, the investigation established that, during the IP, the United Kingdom accounted for only 16 % (in volume) of the imports from Russia into the Community of the product concerned, whereas France accounted for 47 % of the Russian imports of AN into the Community. On this basis, the argument has to be rejected.

(88) In addition, the same association argued that maintaining the anti-dumping measures in force would decrease the incomes of British farmers, thus putting them in a much more difficult economic situation. In this respect, as stated in Regulation (EC) No 132/2001, fertilisers represented on average 6 % of the total production costs for farmers. Given that imports from the country concerned represented, during the IP, 5 % of AN consumption in the Community market, and given that only part of any resulting import price increase is likely to be passed on to the users, any increase in farmers' production costs is likely to be minor. Moreover, were the Community industry to increase not only the volume of sales but also the prices, any such price increase would be limited given the existence of other sources of supply. Indeed, 37 % of all imports of AN into the Community are not subject to anti-dumping measures.

(89) EFIA and one users' association argued that the anti-dumping measures restrict competitively priced alternative sources of AN for the farmers since only 37 % of all imports of AN into the Community are not subject to anti-dumping measures.

On the one hand it is recalled that the purpose of the anti-dumping measures is not to restrict supply, but to re-establish fair competition on the Community market.

On the other hand, it should be noted that the percentage of 37 % is partly underestimated due to the fact that the supply of AN to the Community market by non-dumping countries became less attractive owing to the strong price pressure exerted by Russia, Poland and Ukraine. It is therefore highly likely that, should fair competition be re-established, non-dumping countries will increase their presence on the Community market.

(90) On the basis of the above, the likely impact on farmers was considered not to constitute a compelling reason against the continuation of the measures, as a possible negative effect on farmers is unlikely to offset the positive effect on the Community industry.

5. **Conclusion on the Community interest**

(91) Given the above, it was concluded that there are no compelling reasons of Community interest against the continuation of the measures.

H. **ANTI-DUMPING MEASURES**

(92) The complainant submitted that there were indications of the emergence of new forms of AN, i.e. mixtures of AN with other products, whose only purpose is to circumvent possible anti-dumping measures concerning AN. The attention of the customs authorities is drawn to this issue.

(93) In view of the conclusions reached with regard to dumping and injury, and taking into consideration that it could be established that existing measures are not achieving the intended results in removing the injury previously established, it is concluded that anti-dumping measures should be maintained in order to prevent further injury, and that the level of the measures should be modified.

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(94) For establishing the level of duty, account has been taken of the level of the dumping margin found and the amount of duty necessary to eliminate the injury suffered by the Community industry. On the basis of the lesser duty rule, the injury margin was used for determining the amount of duty to be imposed.

(95) EFMA argued that a double mechanism (specific duty coupled with a minimum import price) would be more appropriate given the extremely low State-fixed gas prices paid by the Russian producers. It is, however, considered that the specific duty is sufficient as it is based on the findings of the review investigation and that the form of the measure, i.e. a specific duty, discourages price manipulation and absorption of the duties. EFMA's request was therefore rejected.

(96) In order to establish the level of duty needed to remove the injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of a comparison, at the same level of trade, of the weighted average import price, with the non-injurious price of AN sold by the Community industry on the Community market.

(97) The non-injurious price has been obtained by adding to the full unit cost of production a profit margin that may reasonably be reached in the absence of injurious dumping, taking account of the allowance with respect to the difference between granular and prilled AN already made for the undercutting calculations. The profit margin used for this calculation is 8 %. The difference resulting from the comparison between the weighted average import price and the non-injurious price of the Community industry was then expressed as a percentage of the total cif import value.

(98) The applicant submitted that a profit margin of 15 % return on capital employed would be appropriate. It argued that this level of return was necessary to reinvest for the long term and to achieve an adequate return on equity for shareholders. In the current context, however, the relevant concept is a reasonable profit the Community industry could have reached in the absence of injurious dumping, which does not coincide with the concept of the profit sought by shareholders. Given the findings in recital 56 of Regulation (EC) No 132/2001, and in the absence of any other comments, 8 % of turnover seems to be a reasonable profit. In order to ensure the efficiency of the measures and to discourage the price manipulation which has been observed previously, it is considered appropriate to impose the duty in the form of a specific amount per tonne.

(99) On the basis of the above, the amount of the duty shall be equal to the fixed amount per tonne of AN as shown below:

Country	Fixed amount of duty (euro per tonne)
Russia	47,07

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of AN, falling within CN codes 3102 30 90 and 3102 40 90, originating in Russia.

2. The amount of the applicable duty per tonne of product shall be a fixed amount per tonne of AN as shown below:

Country	Fixed amount of duty (euro per tonne)
Russia	47,07

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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 2454/93 ([1]), the amount of anti-dumping duty mentioned in paragraph 2 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.

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Article 1A

1. 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 relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.

2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

(a) the goods declared and presented to customs correspond precisely to the product described in Article 1,

(b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

(c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.

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Article 2

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

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

([1]) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 993/2001 (OJ L 141, 28.5.2001, p. 1).

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ANNEX

The following elements shall be indicated on the commercial invoice accompanying the company's sales of ammonium nitrate to the Community which are subject to the Undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company mentioned in Article 1 of Commission Regulation [INSERT NUMBER] issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
   - Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN I, PCN 2 etc),
   - plain language description of the goods corresponding to the PCN concerned (e.g. PCN 1: ammonium nitrate not containing any additional elements – Standard product; PCN 2: ammonium nitrate containing additional elements in special mixtures, etc),
   - company product code number (CPC) (if applicable),
   - CN code,
   - quantity (in tonnes).
7. The description of the terms of the sale, including:
   - price per tonne,
   - the applicable payment terms,
   - the applicable delivery terms,
   - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation [INSERT NUMBER]. I declare that the information provided in this invoice is complete and correct.'.