COUNCIL REGULATION (EC) No 1583/2006

of 23 October 2006

imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America

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 Articles 9 and 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) In February 1994, the Council imposed, by Regulation (EC) No 229/94 [2] definitive anti-dumping duties on imports of ethanolamines (product concerned) originating in the United States of America (USA). The duties took the form of minimum-price-based variable duties for the three types of ethanolamines, i.e. monoethanolamine (MEA), diethanolamine (DEA) and triethanolamine (TEA).

(2) Following a request of the Conseil européen des fédérations de l'industrie chimique (CEFIC) an expiry and interim review pursuant to Articles 11(2) and 11(3) of the basic Regulation was initiated in February 1999. By Regulation (EC) No 1603/2000 [3] the Council concluded these reviews and imposed definitive anti-dumping measures on imports of ethanolamines originating in the USA. The form of the measures was changed as they took the form of a specific fixed duty per tonnes of all types of ethanolamine. Two of the three companies benefiting from an individual anti-dumping duty were Dow Chemical Company and Union Carbide Corporation.

(3) After disinvestment of Dow Chemical Company's ethanolamine business into the company INEOS LLC, the individual anti-dumping duty of EUR 69,40 per tonne applicable to Dow Chemical Company was attributed to INEOS LLC [4]. However, since the Dow Chemical Company acquired on 6 February 2001 all shares of Union Carbide Corporation, a company benefiting from an individual anti-dumping duty of EUR 59,25 per tonne, the Dow Chemical Company is still active in the ethanolamine business. The Union Carbide Corporation still exists but has become part of the Dow Chemical Company group and does no longer have any independent production activities.

2. Request for an expiry review

(4) Following the publication in November 2004 of a notice of impending expiry of the anti-dumping measures applicable to imports of ethanolamines originating in the USA [5], the Commission received on 25 April 2005 a request for a review pursuant to Article 11(2) of the basic Regulation.

(5) The request was lodged by CEFIC on behalf of producers representing a major proportion, in this case more than 75 %, of the total Community production of ethanolamine.

(6) The request was based on the grounds that expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry. Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated by notice of initiation an investigation [6] pursuant to Article 11(2) of the basic Regulation.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 28, 2.2.1994, p. 40.
[3] OJ L 185, 25.7.2000, p. 1.
[4] OJ C 306, 10.12.2002, p. 2.
[5] OJ C 276, 11.11.2004, p. 2.
[6] OJ C 183, 26.7.2005, p. 13.

3. **Investigation**

(7) The Commission's services officially advised the Community producers, the exporting producers in the USA, importers/traders, user industries known to be concerned, as well as the authorities of the USA of the initiation of the 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.

(8) The Commission's services sent questionnaires to all parties known to be concerned and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(9) The Commission also gave the parties directly concerned 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.

(10) Replies to the questionnaire were received from two exporting producers in the USA and their nine related importers in the Community, one related importer in Switzerland, three Community producers (the applicant Community producers), and one industrial user in the Community. One Community producer did not fully reply to the questionnaire and only submitted succinct information and two industrial users in the Community made their views known.

(11) The Commission's services sought and verified all the information deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) Applicant Community producers

BASF AG, Ludwigshafen, Germany

Innovene Europe Ltd, Staines, United Kingdom

SASOL GmbH, Marl, Germany

(b) Exporting producers in the USA

The Dow Chemical Company, Midland, Michigan and Houston, Texas, USA

(c) Related importers in the Community

Dow Chemical Iberica SL, Tarragona, Spain

INEOS Oxide Ltd, Antwerp, Belgium

(d) Related importer in Switzerland

Dow Europe GmbH, Horgen, Switzerland

(e) Industrial users in the Community

Degussa Goldschmidt Espana SA, Granollers, Spain

4. **Investigation period**

(12) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 July 2004 to 30 June 2005 (the RIP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2002 up to the end of the RIP (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(13) The product concerned is the same as that covered by the previous investigations. Ethanolamines are obtained by making ethylene oxide (EO), itself a result of a reaction of ethylene and oxygen, react with ammonia. This synthesis leads to three competing reactions and to three different types of ethanolamines: monoethanolamine (MEA), diethanolamine (DEA) and triethanolamine (TEA), depending on how many times EO is bound. The maximum number of combinations is limited by the number of hydrogen elements in ammonia, namely three. The proportions of the three types in the total output are determined by the production installation design, but can, to a certain extent, be controlled by the ammonia/EO (the molar ratio). Community installations are typically based on naphtha as energy carrier, whereas US installations are natural gas based.

(14) The product concerned is used as an intermediate and/or additive for surfactants used in detergents and personal care products, cosmetics, fertilisers and crop protection agents (glyphosate), corrosion inhibitors, lubrication oils, textile auxiliaries and fabric softeners (esterquats), photographic chemicals, paper and metalworks, as a grinding and binding aid for cement production and as a gas scrubber absorption aid (sweetening the gas by removing acids). Since late 2004, beginning 2005, the product is also increasingly used for wood treatment. Finally, the product can also be used by the manufacturers themselves or by their related manufacturers in the production of ethylene amines.

2. **Like product**

(15) As in the previous investigations, it was shown that the product concerned produced in the USA and sold to the Community is identical in terms of physical and technical characteristics to the product produced and sold in the Community by the Community producers and that there is no difference in use between those products. It has further been found that the product concerned produced in the USA and sold to the Community is identical to that sold on the US domestic market. Therefore, all these products must be considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. **LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING**

(16) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.

1. **Preliminary remarks**

(17) Of the four US exporting producers named in the complaint, two did cooperate in the investigation.

(18) The two cooperating exporting producers represented 100 % of imports to the Community during the RIP, which amounted to 41 000 tonnes. Imports into the Community of the product concerned originating in the USA represented 16,7 % of Community consumption during the RIP down from 29 % during the previous investigation period (1998).

2. **Dumping of imports during the RIP**

Normal value

(19) With regard to the two cooperating US exporting producers, normal value was established for each type of the product concerned, based on the price paid or payable on the domestic market in the USA by unrelated customers pursuant to Article 2(1) of the basic Regulation, since these sales were found to have been made in sufficient quantities and in the ordinary course of trade.

Export price

(20) As in the original and in the previous review investigation, this investigation showed again that the two cooperating US exporting producers exported the product concerned to the Community via companies which are related. As a consequence, and in accordance with Article 2(9) of the basic Regulation, export prices were constructed on the basis of the prices at which the imported product was first resold to independent customers in the Community. Allowance was made for all costs incurred between importation and resale, including selling, general and administrative costs and the profit realised in the Community by the importing companies during the RIP.

Comparison

(21) The normal value was compared with the average export price for each type of the product concerned, on an ex-works basis and at the same level of trade. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors which were claimed and demonstrated to affect price and price comparability were taken into account. Adjustments were made for inland and ocean freight, deferred rebates, handling and packaging costs, credit costs and import duties, which were all deducted from the resale prices in order to arrive at an ex-works basis.

Dumping margin

(22) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established per product type on the basis of a comparison of the weighted average normal value with the weighted average export prices at the same level of trade. This comparison showed the existence of dumping during the RIP, even if at a lower level than established in the previous review. The weighted average dumping margin expressed as a percentage of the cif value at the Community frontier was 4,8 % for INEOS and 20,3 % for Dow Chemical.

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

Preliminary remarks

(23) Further to the analysis of the existence of dumping during the RIP, the likelihood of the continuation of dumping was examined.

Level of dumping in case the measures are repealed

(24) The removal of the measures would allow exporters to reduce their export prices. A reduction of export prices would make the US product more attractive on the Community market. If the export prices were reduced commensurate to the level of the duties, the dumping margins observed during the RIP would be 13,4 % for INEOS and 28,3 % for Dow Chemical.

Further room for exports to the Community market because of unused US production capacity

(25) It is estimated that the unused production capacity in the US during the RIP is about 90 000 tonnes. This was calculated on the basis of information from the two cooperating exporting producers as well as information from leading market journals. Compared to an estimated installed total capacity in the USA of 650 000 tonnes, total estimated fulfilled demand and captive use of 560 000 tonnes implies a capacity utilisation rate of 86 %, which is rather low given the favourable market conditions during the RIP. The relatively low capacity utilisation rate was a consequence of operational problems in certain production facilities. The spare capacity of 90 000 tonnes should be compared to the volume of exports from the US to the Community during the RIP (41 088 tonnes) and total Community consumption (246 670 tonnes). In other words, there is considerable potential to increase exports from the US and take over a large part of the Community market. The propensity of increased exports to the Community is further supported by the 45 000 tonnes capacity expansion ongoing in 2006 in Mexico and Brazil, both important export markets for the US producers.

(26) To conclude, there is some spare capacity available which could be used to produce more ethanolamine and to sell it on the Community market should measures be lifted.

Evolution of the prices in the Community market and in the exporting country market

(27) The ethanolamine market has been characterised by strong growth in the demand for DEA in the years 2000-2001, triggered by the use of DEA in the production of glyphosate herbicides, which are used in a process to allow genetically modified crops to resist such herbicides. The demand for TEA is specifically driven by the use in the cement sector and by the producers of fabric softeners. Since 2004, the market for MEA has increased considerably following a US Regulation, effective 1 January 2005, prohibiting the use of alternative metal based products for wood treatment, causing an additional estimated demand of MEA of 80 000 tonnes. As a consequence, the worldwide price level of ethanolamines is high because of high demand.

(28) The investigation showed that US domestic prices are on average higher than average sales prices on the Community market. Industrial users seem to obtain similar conditions on both markets as they are often multinational companies that negotiate their sourcing on a worldwide basis and select suppliers that are capable of delivering on a similar scale. However, US domestic price for all types of ethanolamines were found to be higher when charged to traders and distributors. This type of sales on the US domestic market is typically conducted on a spot basis, whereas sales on the Community market are rather established on a fixed term contract basis. This implies that sales prices on the Community are set for a longer period and are more stable.

(29) Sales to traders and distributors by the two cooperating exporting producers represent only 13 % of the volumes sold on the US domestic market and 32 % of sales on the Community market, but the US domestic prices were on average 35 % higher than the Community prices for this level of trade. This supported the finding that, given the spot nature of sales to traders and distributors, US domestic prices are adapting more rapidly to price fluctuations. Therefore, in a context of increasing prices, US domestic prices will have a tendency to be relatively higher than Community prices. On the other hand, this level of trade represents the smaller part of sales on both the US domestic and Community markets.

(30) For industrial users, which constitute the majority of customers, the termination of the measures would probably not influence the price level at which ethanolamine is sold in the Community market, since it was observed that the burden of the measures was carried by the US exporting producers. In that scenario, the latter may achieve more profitable sales and would have an incentive to increase exports to the Community market. However, these industrial users might use the disappearance of the measures as a bargaining tool to obtain lower prices from both US exporting producers and the Community industry.

Relationship between the US export prices to third countries and to the Community

(31) Export prices of the product concerned to the other main export markets, namely to Canada and South America, show no regular pattern. Sales prices are sometimes lower and sometimes higher than in the USA and to the Community market depending on the sales conditions. Lower volumes shipped typically entail higher sales prices.

(32) In summary, for both cooperating exporting producers, the US market in principle remains the most important sales market. However, given that 17 % of production was exported during the RIP, sales to the Community and to the rest of the world continue to play an important role in the overall use and profitability of production capacities installed.

Possible short-term development of imports

(33) In the short term, as regards the two cooperating US producers, it can be expected that their import volumes will remain at least stable. Indeed, even with the measures in force and notwithstanding the attractiveness of the US market, they have continued to serve their Community-based clients. A reduction of export volumes may possibly be expected from the US producer INEOS after the takeover of Innovene, with its production facilities in the Community, once the company would have de-bottlenecked the acquired production facilities and have expanded by installing new capacity in the Community, which is not expected to become operational before 2008. At the same time it is expected that the US exporting producers will have repaired the hurricane damage faced in the second half of 2005 and become fully operational again in the second half of 2006/beginning 2007, thereby producing additional quantities which may be sold to the Community market.

(34) As to the non-cooperating US producers, which accounted for 27 % of US production capacity during the RIP, it cannot be excluded that they take up exports to the Community again, should measures be allowed to lapse.

Possible development of worldwide capacity and demand

(35) An analysis was also carried out of possible medium term (up to 5 years) developments of demand and production capacity in the Community, the USA and the rest of the world. It was also analysed how the expected situation on demand and supply would affect the price levels in the Community. All figures in the following recitals are based on information sourced from the companies BASF, Dow and INEOS and the chemical industry's leading reference publications by PCI and Tecnon.

(36) Taking into account the projections of both US and Community producers on future demand and production capacity, growth on the Community market is foreseen to be lower than in the rest of the world. The projected Community average growth rate on an annual basis stands at around 3 % in the medium term, compared to 7 % in Asia and 4,2 % projected worldwide.

(37) In 2004, demand on the European market exceeded Community installed production capacity by approximately 40 000 tonnes. The inverse situation existed in the USA, where the existing capacity was some 90 000 tonnes higher than the effective use and sale of the product, which nevertheless did not negatively affect the high price levels, because of operational production problems limiting supply to the customers. Confronting the projected growth rates with the announced capacity expansions, some excess capacity over demand on the Community market can be expected as from 2008, in particular because of the likely implementation of INEOS' investment plans in the Community, which would increase the installed capacity in the Community by one quarter to a third. Such capacity expansion is expected not to become operational before early 2008. Although such increase in capacity might at the same time be partially compensated by a reduction of imports into the Community and increased export sales by Community producers, it is expected that total installed capacity in the Community by all producers would surpass demand on the Community market during 2008.

(38) On the basis of evidence at the disposal of the Commission, the current excess capacity in the USA is expected to continue at least in the short term because domestic demand, although growing, will not absorb the spare capacity that will become operational again. Over a longer time frame up to 2010, excess capacity is expected to disappear, reducing the incentive for US producers to export. At the same time there are predictions of substantial shortages in Asia. This is illustrated by the fact that Dow Chemical has formed a joint venture with Petronas, called Optimal, and has installed 75 000 tonnes capacity in Malaysia, dedicated to serve the Asian ethanolamine market.

(39) More in general, by 2010, worldwide production capacity is likely to have increased from around 1 300 000 tonnes to 1 785 000 tonnes. This includes new capacity installed in the Community (+ 205 000), in the USA (+ 80 000), Saudi Arabia (+100 000) and Asia (+ 100 000). World demand at a projected growth rate of 4,2 % would by 2010 have increased to between 1 550 000 tonnes and 1 700 000 tonnes. Taking into account that some capacity surplus is always absorbed by stoppages for maintenance and that therefore a certain buffer is needed, the projection for 2010 shows excess capacity in the Community, equilibrium in the USA and shortage in Asia and the rest of the world. In sum, the various capacity expansions do not point to a propensity for US exporting producers to dump on the Community market because of the likely match of supply and demand on a worldwide level. It should however be noted that this is an assessment referring to developments in the medium term, i.e. 2008 to 2010.

Conclusion on the likelihood of a continuation or recurrence of dumping

(40) It is recalled that dumping during the RIP was found to exist for both cooperating exporting producers, however at a lower level than in the previous review investigation.

(41) Compared to the previous review investigation, market share of US imports decreased from 29 % to 16,7 %. There appears to be 90 000 tonnes spare capacity in the USA, the low utilisation rate during the IP being a consequence of temporary events, and the use of an estimated 27 % of US installed capacity could not be investigated due to a lack of cooperation. It cannot be entirely ruled out that these non-cooperating producers would return to the Community market at dumped prices if the measures were allowed to lapse. Although demand on the US market is expected to be stronger than in the Community, the excess capacity in the USA is expected only to be absorbed in the medium term. Moreover, in order to maintain the profitability of production capacities installed, there currently exists an incentive for all producers to increase their sales to the Community market, should measures be repealed.

(42) To conclude, there is a likelihood of continuation of dumping and a risk of an increase of the volume of imports possibly exerting a downward pressure on prices in the Community, at least in the short term, if measures were repealed.

D. DEFINITION OF THE COMMUNITY INDUSTRY

(43) The three applicant Community producers fully co-operated in the investigation. During the RIP, they represented 80 % of the Community production. There is one additional supporting Community producer which supplied information in particular concerning its production but which did not reply to the full questionnaire. Hence, he had to be considered as non-cooperating.

(44) It should be noted that since Regulation (EC) No 1603/2000 publishing the measures that are currently in force, Union Carbide Ltd (UK), which was taken over by the Dow Chemical Company, no longer produces ethanolamine in the Community. Furthermore, BP Chemicals changed its name to Innovene and Condea changed its name to Sasol. Finally, INEOS Oxide Ltd, the UK-based parent company of INEOS Americas LLC, acquired Innovene on 16 December 2005. Both companies, INEOS Americas LLC and Innovene, continued to fully cooperate in the proceeding.

(45) On this basis the three Community producers are BASF AG, Innovene and Sasol and they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(46) The investigation showed that, as in the previous review investigation, part of the production of ethanolamine in the Community is intended for internal, or captive, use. The share is estimated at around one third of total Community production, as it was during the previous review investigation. Captive production was found at the premises of one of the producers included in the Community industry. This producer runs a plant which is earmarked and used for the sole purpose of captive use. The investigation confirmed that the applicant Community producers do not purchase the product concerned for trading purposes or for their captive use from independent parties, either inside or outside the Community. Ethanolamine for captive use is therefore not considered to be in competition with ethanolamine available on the Community market (hereafter the free market).

E. SITUATION ON THE COMMUNITY MARKET

1. Consumption on the Community market

Community consumption	2002	2003	2004	RIP
Total tonnes	283 992	331 194	358 830	366 645
Index	100	117	126	129
Captive tonnes	97 768	107 539	118 584	119 975
Index	100	110	121	123
Free market tonnes	186 224	223 655	240 246	246 670
Index	100	120	129	132

Source: Eurostat statistics and questionnaire replies.

(47) The determination of total Community consumption was based on the combination of production minus the exports of all producers in the Community and the imports from third countries into the Community market. Compared to the year 2002, consumption during the RIP has increased by 29 % or by 83 000 tonnes. The growth was especially pronounced between 2002 and 2003 (+ 17 % or + 48 000 tonnes) but it continued during 2004 and the RIP, although at a lower pace. Consumption has been increasing as a consequence of increased demand for ethanolamines, based on a wide and expanding field of applications. The most important demand drivers since 2002 have been DEA for glyphosate production, TEA for esterquats and MEA for wood treatment.

(48) Free market consumption increased by 32 % (or by 60 000 tonnes) over the period considered with an increase of 20 % (or 37 000 tonnes) between 2002 and 2003.

(49) Concerning the captive market, consumption increased by 23 % or by 22 000 tonnes due to increased use of ethanolamines in production processes of other chemicals.

2. **Imports from the USA, volume, market share and import prices**

US Imports	2002	2003	2004	RIP
Tonnes	46 075	40 576	40 512	41 088
Index	100	88	88	89
Market share	24,7 %	18,1 %	16,9 %	16,7 %
Import price EUR/tonne	979,63	915,15	975,09	995,55
Index	100	93	100	102

Source: Eurostat statistics and questionnaire replies.

(50) The volume of imports into the Community from the USA decreased by 12 % between 2002 and 2003 and has remained at that level since. The market share was determined on the basis of free market consumption in the Community and has declined from 24,7 % to 16,7 % over the period considered, which constitutes a loss of 8 percentage points. The drop of imports and market share between 2002 and 2003 coincided with a 7 % overall decline of the average import price. Between 2002 and 2003, the US exporting producers did not participate in the expansion of the free market consumption in the Community. Also after 2003, the US exporting producers did not increase their market share, although import prices increased again. In a sellers' market, such increased attractiveness would normally have caused additional sales, but US exporting producers did not come back to the Community market as expected, because of operational problems and even more attractive conditions on the US domestic market.

(51) It should be noted that the above prices were collected from the Eurostat import statistics. They do not distinguish the product mix and contain various sales conditions which cannot be compared to those applied by other operators on the Community market. A precise price comparison between dumped imports and Community producers' prices at the same level of trade was carried out and explained in recital (53) below. Over the period considered, the average import price increased modestly by 2 %. All imports into the Community originating in the USA were made via related importers and the import prices therefore are transfer prices within the company's group. In the previous review investigation, such import prices were found to have been artificially set in order to at least partially absorb the anti-dumping measures then in force. The related importers in the Community incurred significant losses during the former RIP and the margins they realised between purchase price (actual import price) and resale price on the Community market were not sufficient to cover the costs incurred between importation and resale. This was the reason that the previous review investigation led to the revision of the form of the anti-dumping measures and that specific fixed duty rates per tonne were imposed.

(52) In the current review investigation, both the US exporting producers and their related importers in the Community were found to have realised profits during the RIP and the related importers' margins were found to have conformed to market conditions. The sales price levels compared to normal value and/or cost of production allowed for adequate profits for all companies involved in markets characterised by high sales prices.

(53) The comparison of cif import prices at Community frontier charged to independent customers including anti-dumping duties with the Community industry's ex-work prices, for the same product types and on the same level of trade, led to the establishment of undercutting of the Community industry's sales prices by between 7,3 % and 17,5 %.

3. **Imports from other third countries, volume, market share and import prices**

Imports from other third countries	2002	2003	2004	RIP
Tonnes	17 596	18 688	12 276	8 773
Index	100	106	70	50
Market share	9,4 %	8,4 %	3,4 %	2,4 %
Import price EUR/tonne	1 034,23	970,75	982,67	955,24
Index	100	94	95	92

Source: Eurostat statistics.

(54) Imports from other third countries halved over the period considered. The market share of the main exporting other countries, mainly Russia and Iran, has indeed become marginal. According to the user industry, this decreasing trend is due to the fact that it was difficult to obtain exactly the requested quantities at a precise delivery date in the two aforementioned countries.

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

Output, production capacity and capacity utilisation

	2002	2003	2004	RIP
Production in tonnes	206 481	242 350	279 307	290 625
Index	100	117	135	141
Capacity in tonnes	263 320	273 820	302 070	311 820
Index	100	104	115	118
Capacity utilisation	78,4 %	88,5 %	92,5 %	93,2 %

(55) Over the period considered, production has increased by 41 %. At the same time capacity was extended by 18 %, leading to an improvement of capacity utilisation from 78,4 % to 93,2 %.

(56) The production capacity increase between 2002 and 2003 is marginal and reflects some efficiency improvements. From 2004 on, more intensive de-bottlenecking and new capacity expansions can be observed.

Inventories

Inventories	2002	2003	2004	RIP
Tonnes	9 543	10 883	10 228	7 596
Index	100	114	107	80

(57) The level of inventories is compared at the end of each year 2002 to 2004 and varies to a certain degree depending upon orders. The level at the end of the RIP is lower, but shows the situation at 30 June 2005 and is therefore not properly comparable with year end inventories. This is because of the fact that, in view of somewhat lower demand from industrial users during the summer months, companies schedule lower production and maintenance of the production facilities.

Sales volume, market share and sales price

	2002	2003	2004	RIP
Sales volume	130 214	144 103	167 054	175 953
Index	100	111	128	135
Market share in total consumption (including captive use)	45,9 %	43,5 %	46,6 %	48,0 %
Market share in free market consumption	69,9 %	64,4 %	69,5 %	71,3 %
Sales price EUR/tonne (free market sales)	801,77	758,49	835,68	936,08
Index	100	95	104	117

(58) The Community industry's sales volume to unrelated customers increased by 35 % over the period considered. Both the market share of total Community consumption and of free market consumption indicate that after a loss of market share between 2002 and 2003, market share has stabilised and stood at 48 % in relation to total consumption respectively 71,3 % in the free market during the RIP. The average price level of sales to unrelated customers followed a similar pattern and after a decrease of 5 % between 2002 and 2003, the price level in the free market during the RIP was 17 % higher than in 2002.

(59) Compared to the price level during the RIP of the previous review investigation, which coincided with the calendar year 1998, sales prices in 2004 and during the current RIP were on average respectively 22,7 % and 37,5 % higher than in 1998. No invoices are issued with regard to the production destined for captive consumption which is used in integrated production facilities.

Factors affecting Community prices

(60) Consumption has been continually increasing over the last decade, from 152 000 tonnes in 1995 to 367 000 tonnes during the RIP, which represents an annual increase of 9,7 %. The more recent increase of consumption over the period considered, from 2002 to the RIP, was 10,7 % on an annual basis, compared to a 7 % annual increase of capacity. This evolution has supported high price levels in the Community, at the same time pushing the Community industry towards an important improvement of capacity utilisation rates from 78,4 % to 93,2 %, leading to a 14,5 % annual increase of production. In absolute terms production increased by 84 000 tonnes compared to an increase of consumption of 83 000 tonnes, and capacity expanded by only 48 500 tonnes.

	2002	2003	2004	RIP
Average cost of production EUR/tonne	779,53	749,85	746,84	790,60
Index	100	96	96	101

(61) High and increasing demand compared to a lower pace of capacity expansion and overall reduction of imports have sustained the price level of ethanolamine in the Community. Moreover, the sales margins have hardly been influenced by the full cost of production per tonne over the period considered, as the price increase was mainly due to market developments. The increase of cost of production by 5,9 % between 2004 and the RIP was the consequence of an increasing naphta price, which is an oil based energy driver used in the production of ethylene oxide, the main raw material in the production of ethanolamine in the Community.

Employment, productivity and wages

	2002	2003	2004	RIP
Employment	102	103	101	102
Index	100	101	99	99
Productivity tonnes per employee	2 016	2 354	2 755	2 861
Index	100	117	137	142
Wages in EUR 1 000	6 860	7 526	8 018	7 598
Index	100	110	117	111
Average wage per employee (EUR)	66 976	73 105	79 097	74 797
Index	100	109	118	112

(62) Employment at the level of the Community industry for the like product remained stable during the period considered. The production process is largely automated and therefore not labour-intensive. At the same time, due to constant improvements and de-bottlenecking of the production installations, productivity increased by 42 % over the period considered.

(63) Over the period considered, wages increased by 11 % with a peak in 2004 which can be attributed to restructuring efforts and redundancies by one of the complaining Community producers. The average wage per employee followed a similar pattern.

Profitability

Sales to unrelated parties in the Community	2002	2003	2004	RIP
Sales value in EUR 1 000	104 402	109 301	139 603	164 705
Index	100	105	134	158
Cost of production in EUR 1 000	101 506	108 056	124 763	139 100
Index	100	106	123	137
Profitability	2,8 %	1,1 %	10,6 %	15,5 %

(64) The profitability over the period considered on free market sales of the product concerned to unrelated parties in the Community increased from 2,8 % in 2002 to 15,5 % during the RIP, after a decline to 1,1 % in 2003. This improvement of profitability since 2003 is to be seen in the context of stable imports from the USA, and an increasing demand, with a consequence of both increased sales volumes and an increased sales price level, which during 2004 and the RIP were more pronounced than the increase of the cost of production.

Investments, return on investment and ability to raise capital

	2002	2003	2004	RIP
Investments in EUR 1 000	1 170	9 975	687 478	388 476
Index	100	852	58 750	33 198
Return on investment	2,2 %	0,9 %	10,2 %	17,6 %

(65) The price levels obtained in the Community determine whether companies are inclined to build additional capacity. Over the period 2002 to 2003, return on investment was not considered sufficiently high in order to warrant the installation of additional production installations. As a consequence, companies limited themselves to some de-bottlenecking and efficiency improvements. The continuously increasing demand combined with only limited capacity increase has supported higher price levels, to such an extent that since 2004 it became again realistic to implement previously shelved investment projects.

(66) Concerning the ability to raise capital, it should be noted that the ethanolamine production is only a small part of the overall production of chemical products by the Community industry, which mostly represent major international chemical companies, which enjoy high overall levels of cash flow and auto-financing and credit-worthiness. Thus, the Community industry in general did not have major problems in raising capital.

Cash flow

	2002	2003	2004	RIP
Cash flow in EUR 1 000	4 842	3 301	16 863	27 596
Index	100	68	348	570
Cash flow on turnover	4,6 %	3,0 %	12,1 %	16,6 %

(67) The evolution of the cash flow is a further illustration of the link between price levels, profitability and the return on investment. After low cash flow levels in 2002 and 2003, the Community industry returned to double-digit figures for the cash flow in relation to turnover since 2004 and its level for most companies is sufficiently high in order to direct funding towards new investments in the ethanolamines business.

Growth

(68) The Community industry benefited from the growth of the market over the period considered, which is illustrated by the increase of its market share of total consumption from 45,9 % to 48 % and of its market share of free consumption from 69,9 % to 71,3 %.

Magnitude of the dumping margin

(69) Dumping continued during the RIP, even if at levels lower than established in the previous review investigation.

Recovery from the effects of past dumping

(70) As demonstrated above, the Community industry indeed has had the chance to recover from past dumping, in particular in terms of sales prices and profitability.

Export activity of the Community industry

	2002	2003	2004	RIP
Export volume tonnes	15 631	15 278	16 709	17 428
Index	100	98	107	111

(71) The Community industry's export volumes to third countries increased by 11 % over the period considered which corresponds to 4 % on average on an annual basis, which is largely in line with the expansion of world consumption. It illustrates that the Community industry is competitive on world markets.

5. **Conclusion on the situation on the Community market**

(72) The volume of ethanolamine consumed on the Community market expanded by 29 % while imports from the USA declined by 11 % over the period considered. At the same time, the Community industry could increase its sales volume and thereby stabilise and even slightly increase its market share.

(73) The economic situation of the Community industry improved with respect to most of the economic indicators: production (+ 41 %), production capacity (+ 18 %) and capacity utilisation, sales volume (+ 35 % or + 45 000 tonnes) and value (+ 58 %), productivity, market share (+ 2 percentage points), cash flow and profitability, investments and return on investment. The development of the costs of production per tonne remained below the development of sales prices. The Community industry moreover benefited from the growth of the Community market and kept pace with world demand evolution as its export activity increased by 11 % in volume.

(74) To conclude, in view of the positive development of the indicators pertaining to the Community industry, it is considered to be in a good situation. It could not be established that material injury has continued. Therefore, it was examined whether there is a likelihood of recurrence of injury should measures be allowed to lapse.

F. **LIKELIHOOD OF A RECURRENCE OF INJURY**

Summary of the analysis of the likelihood of the continuation of dumping and of the recurrence of injurious dumping

(75) It is recalled that exporting producers in the USA were still practicing dumping during the RIP, even if at a reduced level compared to the previous investigation. Removal of the measures could, if the export prices were reduced commensurately, lead to dumping margins between 13,4 % and 28,3 % for the cooperating exporting producers, whereas the behaviour of the non-cooperating producers, that represented 42 % of the imports in the original investigation, remains unknown. The latter, however, being subject to the highest anti-dumping measures, would have the highest incentive to return to the Community market, if measures were terminated.

(76) At the same time it is estimated that a spare capacity of 90 000 tonnes exists currently in the US market, once the operational problems and the effect of the hurricane will have been remedied.

(77) It was therefore concluded that there is a likelihood of continuation of dumping and a risk of an increase of the volume of imports exerting a downward pressure on prices in the Community, at least in the short term, if measures were repealed.

(78) It is normally the case that an increase of dumped imports would exercise a downward pressure on the sales price level and would negatively affect the Community industry's profitability as well as its financial recovery that was observed during the period considered. In this context, it should be noted that the level of undercutting would substantially increase should measures be repealed.

Expected shift of US production from MEG to ethanolamine

(79) It is expected that US producers will to a certain extent redirect the use of the main raw material ethylene oxide (EO) from the production of monoethyleneglycol (MEG) to the production of ethanolamine.

(80) The raw material EO is used in the production of other chemical products or derivatives, mostly ethylene glycols and in particular monoethyleneglycol (MEG). EO-capacity is limited to only a few locations in the world given its highly explosive and toxic nature, subject to special environmental, health, security and defence regulations. As a consequence, the allocation of EO depends upon the market prices of its derivatives.

(81) Historically, a certain hierarchy existed in price levels: the ethylene price was higher than MEG and the price for ethanolamine was higher than both ethylene and MEG prices. However, since the end of 2003, MEG prices in the Community significantly increased and they became higher than ethylene prices and at certain periods of time even higher than ethanolamine prices. As a consequence, EO has been increasingly redirected towards MEG production, thereby creating a relative scarcity for EO in the market, at the same time contributing to keep ethanolamine prices at a relatively high level.

(82) However, Middle East countries are currently investing in naphta-based ethylene glycol capacity. New production capacity of MEG is expected to become operational in the short term in Kuwait (with participation of Dow Chemical), Saudi Arabia and Iran. Given the fact that naphta is an oil-based material, these countries will have a clear comparative advantage in terms of cost. It is therefore reasonable to expect that the MEG price will go down in the short term and, that US producers will have reduced possibilities to sell MEG in particular in Asia, where the Chinese textile and polyester activities already take more than 30 % of worldwide MEG consumption. This would be the case in particular for one of the non-cooperating exporting producers which is currently an important exporter of MEG to Asia. As a consequence, it can be expected that the US producers would turn towards the production of more ethanolamine, thereby exerting a downward pressure on prices and creating a need to find additional clients outside of the US domestic market and thus resorting to the Community market.

Evolution of prices and possibility to adapt prices to cost of production after the RIP

(83) Bearing in mind the current stable situation of the Community industry, the likelihood of a recurrence of injury caused by a downward pressure on prices also depends upon the magnitude of such price decrease and the evolution of other factors, such as the cost of production and the possibility to pass cost increases on to clients. In this respect, it was investigated what was the situation after the RIP.

(84) Additional data was collected in order to verify whether the conclusions drawn on the basis of the analysis of the period considered and more in particular the RIP remained valid during the second half of 2005 and the first five months of 2006.

(85) During the second semester of 2005, prices on the Community market for all types of ethanolamines continued to rise by between 11,4 % and 14,7 %. The average price increase on the US market was even more pronounced with 22 %. Hurricane damage in Louisiana was primarily responsible for occasional US domestic market shortages.

(86) This evolution continued into the first five months of 2006 but at a remarkably lower pace: prices on the Community market rose between 2,8 % and 4 % and on the US domestic market by 9,9 %, illustrating a gradual curing of the local operational and damage problems.

(87) Compared to the RIP, oil prices increased considerably during the second half of 2005 and were on average some 30 % higher, affecting further the cost of naphta, the increase of which began in the second half of the RIP (first semester of 2005). US import prices into the Community seem to adjust less rapidly to the increase of raw material prices, partly because of the slower adjustment of contract prices and in an effort to protect market share and partly because the US producers' production installations are gas based instead of naphta based, with gas price increases lagging on oil price increases.

(88) The oil prices continued on average to increase by 10 % into the first five months 2006, negatively affecting the profitability of the Community industry because of the observed bending of the upward sales price evolution.

(89) The investigation of the events after the IP seems to point to a turning point in the evolution of the ethanolamine Community market. Sales prices seem to have reached a ceiling and for certain ethanolamine types even showed a minor decrease. There are indications that an increase of the cost of production will not easily be translated into higher sales prices to clients. However, it is unclear at this moment to what extent the increasing cost of production and the downward pressure on profitability will entail an injurious situation for the Community industry in the medium term.

Conclusion on the likelihood of recurrence of injury

(90) In case measures were repealed, there is a short term likelihood of a significant increase of dumped US imports to the Community with downward pressure on prices as a consequence.

(91) In the medium term, this could be aggravated by the increase of ethanolamine production in the US in reaction to reduced MEG sales opportunities, necessitating the US producers to find additional sales markets and thereby redirecting larger volumes to the Community market.

(92) The apparent end of the increase of sales prices in the beginning of 2006 and the adverse evolution of the cost of production due to the oil price evolution also seem to negatively affect the Community industry's profitability.

(93) All these factors point to a likelihood of recurrence of injury. However, some of the above conclusions are based on events likely to happen in the medium term.

G. COMMUNITY INTEREST

1. Preliminary remark

(94) In accordance with Article 21 of the basic Regulation, it was examined whether maintaining the anti-dumping measures currently in force would be against the interest of the Community as a whole. The determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, importers, traders, wholesalers and industrial users of the product concerned.

(95) It should be recalled that in the previous investigations, the imposition of measures was not considered to be against the Community interest. Furthermore, the present investigation is an expiry review, thus analysing a situation in which anti-dumping measures are in place.

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

2. Interest of the Community industry

(97) It is recalled that dumping during the RIP was still present and that there exists a likelihood of continuation of dumping of the product concerned originating in the USA and of recurrence of injury to the Community industry.

(98) The Community industry has proven to be a viable and competitive industry, confirmed by the positive development of most economic indicators, in particular profitability, cash flow and return on investment. The previously imposed anti-dumping measures have contributed to the current price level on the Community market, allowing the Community industry to restore a profitability that allows for a sufficient return on investment, to a degree where new capacity investments become economically feasible. In particular the US exporting producer INEOS, which after the takeover of Innovene became de facto a Community producer, announced important investments in the Community. The continuation of the measures would also contribute to uphold the profitability of this investment project. Therefore, it is in the interest of the Community industry to maintain measures against dumped imports from the USA.

3. Interest of importers and traders/wholesalers

(99) Given the lack of cooperation of any trader and wholesaler, it was concluded that the absence or continuation of measures does not affect these parties to a great extent. Moreover, the investigation did not show the existence of any unrelated importers; all imports into the Community of the product concerned originating in the USA appear to transfer over importers related to the US exporting producers.

(100) Continuation of the measures will not change the current situation of the related importers, who were found to have realised profits during the RIP at margins conform to market conditions. Of course, discontinuation of the measures could be in the interest of the related importers in case the sales price level to clients would not be affected and in case the US exporting producers would not claim part or all of the resulting extra profit margin while setting the prices at which related importers can purchase ethanolamine.

4. **Interest of industrial users**

(101) Based on the fact that the continuation of the measures would represent a second renewal of anti-dumping measures, particular attention was paid to the interest of the industrial users.

(102) Only users from the esterquat business for fabric softeners came forward in this investigation. One industrial user, representing around 14 % of total US imports during the RIP, replied to the questionnaire, two others made their views known and forwarded information on the cost structure of production of the finished goods. Esterquats are produced on the basis of TEA and are used as fabric softeners, commercialised by the so-called 'soapers' such as Procter & Gamble, Unilever, Henkel, Benckiser and Colgate. These industrial users argue that the increase of the TEA price is putting their businesses in danger and that there exists a shortage of supply on the Community market. Both factors would be alleviated if the anti-dumping measures were allowed to lapse. Moreover, the continuation of production in the Community is allegedly in jeopardy if profitability of the esterquat business is not improved.

(103) It was found that during the RIP TEA represented around 23 % of the total cost of production of esterquats, up from 22 % in 2003 but overall comparable to the situation that existed in 2002, the first year of the period considered. After the RIP, given the price evolution of TEA observed, the incidence of TEA in the full cost of the finished product is expected to be even more important. It is clear that an elimination of the anti-dumping measures would at least in the short term alleviate the burden of the cost of TEA as raw material. This cost reduction, under the hypothesis that the abolition of measures would be fully translated into a lower purchase price, would reduce the cost of TEA by approximately 7 %. The effect in the full cost of production of the finished goods would be a reduction of around 1 %, improving the profitability by the same margin.

(104) It was found that profitability in the esterquat business has indeed deteriorated over the period considered from around 18 % to 8 %. However, the decline of the sales price of esterquats by 6 % over the period considered seems to have been the major contributing factor, causing the relative importance of production costs in the sales price to rise by almost 10 %. The sector seems to undergo the effect of a move east, in particular to Russia, where lower cost solutions can be found in general, but more specifically for the purchase of the other main raw material 'thalo fatty acid'. This product of bovine origin can be replaced by the vegetal 'palm-styrene' for which supply in the east is more abundant. Moreover, the soapers, for reasons of efficiency, demand a local presence of their suppliers, which may be the main reason for a possible delocalisation out of the Community.

(105) Finally, the claim of a shortage of supply of TEA in the Community market was examined but found not to be substantiated, based on offers put forward by certain producers, which were not accepted by the users concerned.

(106) In summary, although it is recognised that the increasing price of TEA has exercised a negative pressure on the cost of production of the finished products of the industrial users that came forward, this pressure is rather limited and the abolition of the anti-dumping measures would only provide a marginal alleviation. Other factors, such as the cost of other raw materials and the requirements made by the customers of the products, were found to have a much more significant influence. Therefore, it was decided that a continuation of the measures would not significantly affect the industrial users.

5. **Conclusion on Community interest**

(107) The investigation has shown that the existing anti-dumping measures have contributed to the recovery of the Community industry. The Community industry would benefit from a continuation of the measures by upholding current profitable price levels, allowing for additional investment. If measures were allowed to lapse, this would endanger this recovery process. Therefore, the continuation of measures is in the interest of the Community industry.

(108) Unrelated importers do not seem to exist and unrelated traders/wholesalers did not come forward. All imports originating in the USA are made via related traders, who, while measures were in place, were found to have obtained market conform profit margins during the RIP.

(109) Furthermore, in the past, the existing measures appear not to have had any significant negative effect on the economic situation of the users. On the basis of the information collected during the current investigation, any price increase, if at all, resulting from the imposition of anti-dumping measures, does not appear to be disproportionate when compared to the benefit of the Community industry achieved by the removal of the trade distortion caused by the dumped imports.

(110) Regarding the Community interest, it is therefore concluded that there are no compelling reasons not to continue imposing the anti-dumping measures currently in force against imports of ethanolamines originating in the USA.

(111) It is therefore considered appropriate to maintain the current anti-dumping measures against imports of ethanolamines originating in the USA.

H. **ANTI-DUMPING MEASURES**

(112) 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 submit comments and claims subsequent to disclosure.

(113) The investigation showed that spare capacities exist in the country concerned and that dumping continued during the RIP. The situation of the Community industry improved over the period considered with respect of most of the injury factors mainly due to favourable market conditions worldwide. On the basis of the positive development of the economic situation of the Community industry, it could not be established that material injury has continued. The investigation on the likelihood of recurrence of injury however showed that a number of factors such as the spare capacity existing in the USA, the reduced sales opportunities for MEG, the situation of the ethanolamine both worldwide and at Community level, point to a likelihood of recurrence of injury in the medium term.

(114) 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 ethanolamines originating in the United States of America, imposed by Regulation (EC) No 1603/2000, as last amended by a notice regarding the anti-dumping fixed duty rate applicable to INEOS [1], should be maintained. It is further considered that measures should be maintained for an additional period of two years only.

(115) On the one hand, a likelihood of recurrence of injurious dumping has been established based on the facts that (i) dumping by US exporting producers has continued notwithstanding the measures in force, and (ii) there is an expectation of increased imports into the Community because of existing excess production capacity of 90 000 tonnes in the USA that will become operational again by the end of 2006 and considering that there is no corresponding domestic demand to absorb this capacity in the USA. Additionally, the main non-cooperating US producer currently subject to the highest anti-dumping duty and therefore also having the highest incentive to return to the Community market in case the measures lapse, has the necessary distribution network at its disposal because it sells other chemical products in the Community market.

(116) On the other hand, US excess capacity is expected to disappear gradually towards 2010 at the latest and the planned capacity expansions by one of the cooperating US exporting producers in the Community are scheduled to come online by the end of 2008, thus in two years time. The latter considerations, combined with continuing uncertainty about the influence of the evolution of the oil prices on the profitability of the Community industry, justify the limitation of the maintenance of the measures to two years.

(117) After this period of two years, the Commission will, if appropriate, initiate a new review investigation in accordance with Article 11 of the basic Regulation ex officio. will apply,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ethanolamines falling within CN codes ex 2922 11 00 (monoethanolamine) (TARIC code 2922 11 00 10), ex 2922 12 00 (diethanolamine) (TARIC code 2922 12 00 10) and 2922 13 10 (triethanolamine), originating in the United States of America.

2. The rate of the definitive anti-dumping duty applicable to the net, free at Community frontier price, before duty, of the products described above and manufactured by the companies below shall be as follows:

Country	Company	Specific fixed duty
United States of America	The Dow Chemical Corporation 2030 Dow Center Midland, Michigan 48674 USA (TARIC additional code A115)	EUR 59,25 per tonne
	INEOS Americas LLC 7770 Rangeline Road Theodore, Alabama 36582 USA (TARIC additional code A145)	EUR 69,40 per tonne
	Huntsman Chemical Corporation 3040 Post Oak Boulevard PO Box 27707 Houston, Texas 77056 (TARIC additional code A116)	EUR 111,25 per tonne
	All other companies (TARIC additional code A999)	EUR 111,25 per tonne

[1] OJ C 306, 10.12.2002, p. 2.

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

4. 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 the anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and 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 Luxembourg, 23 October 2006.

For the Council
The President
J.-E. ENESTAM

[1] OJ L 253, 11.10.1993, p. 1.