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COUNCIL REGULATION (EC) No 1911/2006

of 19 December 2006

imposing a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate originating in Algeria, Belarus, Russia and Ukraine following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

(OJ L 365, 21.12.2006, p. 26)

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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]) (the basic Regulation) and in particular Article 11(2) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) On 23 September 2000 the Council imposed, by Regulation (EC) No 1995/2000 ([2]), definitive anti-dumping measures on imports of solutions of urea and ammonium nitrate (UAN) originating in Algeria, Belarus, Russia, Ukraine and Lithuania. The measures imposed on imports of UAN originating in Lithuania lapsed after enlargement of the European Union on 1 May 2004. The investigation that led to these measures will be referred to as 'the original investigation'.

(2) The measures applying to these imports consisted of specific duties, except for imports from one Algerian exporting producer from which an undertaking was accepted.

2. **Request for a review**

(3) On 20 June 2005, a request for an expiry review pursuant to Article 11(2) of the basic Regulation, was lodged following the publication of a notice of impending expiry on 17 December 2004 ([3]). This request was lodged by the European Fertiliser Manufacturers Association (EFMA) (the applicant) on behalf of producers representing a major proportion, in this case more than 50 % of the total Community production of UAN.

(4) The applicant alleged and provided sufficient *prima facie* evidence that there is a likelihood of continuation or recurrence of dumping and injury to the Community industry with regard to imports of UAN originating in Algeria, Belarus, Russia and Ukraine (the countries concerned).

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 22 September 2005, by a notice of initiation published in the *Official Journal of the European Union* ([4]), the initiation of an expiry review 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 238, 22.9.2000, p. 15. Regulation as amended by Regulation (EC) No 1675/2003 (OJ L 238, 25.9.2003, p. 4).
([3]) OJ C 312, 17.12.2004, p. 5.
([4]) OJ C 233, 22.9.2005, p. 14.

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3. **Investigation**

3.1. *Investigation period*

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

3.2. *Parties concerned by the investigation*

(7) The Commission officially advised the exporting producers, importers and users known to be concerned and their associations, the representatives of the exporting countries, the complainant and the Community producers of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(8) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(9) In view of the large number of Community producers and of importers in the Community not related to an exporting producer in one of the countries concerned, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the investigation and to provide the Commission with the information requested in the notice of initiation.

(10) After examination of the information submitted, and given the high number of Community producers which indicated their willingness to cooperate, it was decided that sampling was necessary with regard to Community producers. Given the fact that only one importer provided the information requested in the notice of initiation and expressed its willingness to further cooperate with the Commission services, it was decided that sampling was not necessary with regard to importers.

(11) Questionnaires were sent to the four sampled Community producers and to all known exporting producers.

(12) Replies to the questionnaires were received from the four sampled Community producers and six exporting producers in the countries concerned, as well as from their related traders.

(13) One producer in the analogue country provided a complete questionnaire reply.

(14) The Commission sought and verified all the information it deemed necessary for a determination of the likely continuation or recurrence of dumping and resulting injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) Exporting producer in Russia

— JSC Mineral and Chemical Company (Eurochem), Moscow, Russia, and its two related manufacturing companies:

— PJSC Azot (NAK Azot), Novomoskovsk, Russia, and

— PJSC Nevinnomyssky Azot (Nevinka Azot), Nevinnomyssk, Russia;

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(b) Related trader to Eurochem

— Eurochem Trading GmbH, Zug, Switzerland – (Eurochem Trading);

(c) Related trader to the Ukrainian producer Stirol

— IBE Trading, New York, New York, USA;

(d) Producer in the analogue country

— Terra Industries, Sioux City, Iowa, USA;

(e) Sampled Community producers

— Achema AB, Jonava, Lithuania,

— Grande Paroisse SA, Paris, France,

— SKW Stickstoffwerke Piesteritz GmbH, Wittenberg, Germany,

— Yara SA, Brussels, Belgium and its related producer Yara Sluiskil BV, Sluiskil, The Netherlands.

3.3. *Sampling*

(15) Ten Community producers properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. With regard to those 10 Community producers, the Commission selected, in accordance with Article 17 of the basic Regulation, a sample based on the largest representative volume of production and sales of UAN in the Community which can reasonably be investigated within the time available. The four sampled Community producers accounted for 63 % of the total Community industry production during the RIP, whilst the above 10 Community producers accounted for 75 % of the total Community production during the RIP.

(16) In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted on the sample chosen and raised no objection thereto.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(17) The product concerned is the same as in the original investigation, i.e. a solution of urea and ammonium nitrate, a liquid fertiliser commonly used in agriculture, originating in the countries concerned. It consists of a mixture of urea, ammonium nitrate and water. The nitrogen (N) content is the most significant 'feature' of the product, and it can vary between 28 % and 32 %. Such variation can be obtained by adding more or less water to the solution. Most of the imported UAN was 32 % N, which is more concentrated, and therefore cheaper to ship. However, whatever their nitrogen content, all solutions of urea and ammonium nitrate are considered to have the same basic physical and chemical characteristics and therefore constitute a single product for the purpose of this investigation. The product concerned falls within CN code 3102 80 00.

2. **Like product**

(18) As established in the original investigation, this review investigation confirmed that UAN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. The product concerned and the products manufactured and sold by the exporting producers on the domestic market in the countries concerned, as well as those manufactured and sold by the Community producers on the Community market and by the producer in the analogue

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country on the domestic market of the analogue country have thus been found to have the same basic physical and chemical characteristics and essentially the same uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

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

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

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

(20) During the RIP, exports to the Community of UAN originating in the countries concerned only took place from Algeria. Thus, a dumping calculation to examine whether there was likelihood of continuation of dumping was carried out for the two cooperating Algerian exporting producers. For the other cooperating exporting producers in Belarus, Russia and Ukraine, the investigation focused on the likelihood of recurrence of dumping.

Algeria

General

(21) The only two Algerian producers of UAN, Fertalge and Fertial, cooperated in the investigation. These two producers represented the totality of exports of UAN originating in Algeria to the Community during the RIP, which corresponded to 177 383 tonnes. Imports into the Community of the product concerned originating in Algeria represented 4,8 % of Community consumption which was 3 694 531 tonnes in the RIP. Imports from Algeria thus went up from 116 461 tonnes by 52 % in comparison to the original investigation period.

(22) Therefore, the examination of dumping based on the information provided by these two cooperating exporting producers was considered to also be representative for the country as a whole.

Normal value

(23) It was first established for each of the two cooperating exporting producers whether its total domestic sales of UAN were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for 5 % or more of the total sales volume of the product concerned exported to the Community. The investigation showed that both companies only sold one type of UAN to the Community and that this type was not sold in representative quantities on the domestic market.

(24) Therefore, for both exporting producers normal value could not be based on domestic sales and had to be constructed pursuant to Article 2(3) of the basic Regulation by adding to each exporter's cost of manufacturing of the product exported to the Community a reasonable amount for selling, general and administrative costs (SG&A costs) and a reasonable profit margin.

(25) Regarding the cost of manufacturing, it should be noted that energy costs, such as electricity and gas, represent a major proportion of the manufacturing cost and a significant proportion of the total cost of production. In accordance with Article 2(5) of the basic Regulation, it was examined whether the costs associated with the production and sales of the product under consideration were reasonably reflected in the records of the parties concerned.

(26) The investigation showed no indication that the electricity would not be reasonably reflected in the records of the exporting producers. In this context, it is *inter alia* noted that electricity

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prices paid by the Algerian producers during the RIP were in line with international market prices, when compared to other countries, such as Canada and Norway. However, the same could not be said with regard to gas prices.

(27) As concerns gas supplies, in fact, it was established on the basis of data published by internationally recognised sources specialised in energy markets, that the price paid by the Algerian producer was less than one fifth of the export price of natural gas from Algeria. In addition, all available data indicates that domestic gas prices in Algeria were regulated prices, which are far below market prices paid for natural gas, for example in the USA, Canada, Japan and the EU. These four markets account for a total of 46 % of worldwide gas consumption, and the prevailing domestic price levels in these four markets appear to reasonably reflect costs. Moreover, the price of gas paid by the companies concerned was significantly lower than the gas price paid by the Community producers.

(28) In view of the above, it was considered that the gas prices paid in Algeria during the review investigation period could not reasonably reflect the costs associated with the production and distribution of gas. Therefore, as provided for in Article 2(5) of the basic Regulation, the gas costs borne by one cooperating exporting producer, Fertial, were adjusted on the basis of information from other representative markets. The adjusted price was based on the average price during the RIP of Algerian liquefied natural gas (LNG) when sold for export at the French border, net of sea freight and liquefaction costs, since this was considered to be the most appropriate basis, as this public information refers exclusively to gas of Algerian origin. France, being both the largest market for Algerian gas and having prices reasonably reflecting costs, can be considered a representative market within the meaning of Article 2(5) of the basic Regulation. The other cooperating company, Fertalge, did not use natural gas as a raw material, since it produces UAN from ammonium nitrate (AN), that is produced locally, and urea. Since the cost of AN produced locally reflected Algerian domestic gas price mentioned in recital 27, the costs of AN borne by this company were adjusted accordingly.

(29) The manufacturing costs provided by the cooperating exporting producers were therefore recalculated in order to take account of the adjusted gas prices, using equally the prices of gas when sold at the French border, net of sea freight and liquefaction costs. To the manufacturing cost so recalculated, a reasonable amount for SG&A and a reasonable profit margin were added, in accordance with Article 2(3) and Article 2(6) of the basic Regulation.

(30) SG&A costs and profit could not be established on the basis of the chapeau of Article 2(6) of the basic Regulation because the two cooperating companies did not have representative domestic sales of the product concerned in the ordinary course of trade. Article 2(6)(a) of the basic Regulation could not be applied, since the two cooperating producers are the only two producers of UAN in Algeria. Article 2(6)(b) was not applicable either, since the manufacturing cost for products belonging to the same general category of goods would also need to be adjusted in respect of gas costs, for the reasons indicated in recital 28 above. As it was found to be impossible to establish the magnitude of the necessary adjustment for all products belonging to the same general category of goods sold domestically, it was equally impossible to establish the profit margins after such adjustment. Therefore, SG&A costs and profit were established pursuant to Article 2(6)(c) of the basic Regulation.

(31) In accordance with Article 2(6)(c) of the basic Regulation, the SG&A costs and profit were determined on the basis of a

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reasonable method. As the Algerian domestic market of products of the same general category is extremely small, information had to be obtained from other representative markets. In this respect, consideration was given to publicly available information relating to major companies operating in the nitrogen fertilisers business sector. It was found that the corresponding data from North American (USA and Canada) producers would be the most appropriate for the purpose of the investigation, given the large availability of reliable and complete public financial information from listed companies in this region of the world. Moreover, the North American market showed a significant volume of domestic sales and a considerable level of competition from both domestic and foreign companies. Therefore, SG&A costs and profit were established on the basis of the weighted average SG&A costs and profit from three North American producers, which were found to be amongst the largest companies in the fertilisers' sector, with regard to their north American sales of the same general category of products (nitrogen fertilisers). These three producers were considered to be representative of the nitrogen fertilisers' business (on average over 80 % of the turnover of the company/-business segment) and their SG&A costs and profit as representative of the same type of costs normally incurred by companies operating successfully in that business segment. The percentage for SG&A costs was 6,9 % of turnover. The calculated average profit margin was 9,1 % of turnover. Furthermore, there is no indication suggesting that the amount for profit so established exceeds the profit normally realised by Algerian producers on sales of products of the same general category in the Algerian market.

Export price

(32) In accordance with Article 2(8) of the basic Regulation, the export price was established on the basis of the price actually paid or payable for the product concerned when sold for export to the Community.

Comparison

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

Dumping margin

(34) The dumping margin for each exporting producer was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.

(35) The investigation showed that dumping took place during the RIP even at a higher level than in the original investigation. The dumping margins expressed as a percentage of the cif Community frontier price, are in the range of 50 % to 60 %.

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

2.1. *Algeria*

(36) The two Algerian cooperating exporting producers represent the totality of imports of the product concerned from this country into the Community. Therefore, the examination of whether it would be likely that dumping continues should measures for Algeria be repealed was based on the information provided by these two cooperating exporting producers.

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Spare capacity

(37) Algerian cooperating producers managed to double their production capacity while they increased their production by around 20 % during the period considered. Therefore, their spare capacity has significantly increased from less than 100 000 tonnes to 300 000 to 350 000 tonnes.

(38) Since the Algerian domestic market is insignificant and this is not likely to change in the future, any increase in production will be export-oriented. By activating their spare capacity, the two cooperating exporting producers could supply 10 % to 20 % of the Community consumption.

(39) Given that dumping continued during the RIP and on the basis of the spare capacity that the Algerian cooperating producers have built up, it is likely that the volume of Algerian exports into the Community will increase at dumped prices should measures lapse.

(40) In the light of the above, there is likelihood of continuation of dumped exports to the Community should measures be repealed.

Comparison between the Algerian normal value and the prevailing price level in the Community

(41) The normal value established for both companies significantly exceeded EU market prices during the RIP. It cannot be excluded that Algerian exporting producers would continue to sell to the Community at dumped prices, whether they have to pay duties or not.

2.2. *Relationship between the constructed normal value in Belarus, Russia and Ukraine and export prices to third countries*

2.2.1. Belarus and Ukraine: domestic sales prices based on the analogue country

(42) A comparison of domestic sales prices of UAN in Belarus and Ukraine and export prices to third countries was carried out. In this respect it should be noted that since Belarus is considered a non-market economy country and Ukraine was not yet considered a market economy country at the time of the lodging of the request for the expiry review ([1]), the normal value for these two countries had to be determined on the basis of data obtained from producers in a market economy third country, in accordance with Article 2(7) of the basic Regulation. In the notice of initiation, the USA was envisaged as an appropriate analogue country, being an open competitive market, where producers face a considerable level of competition from foreign imports.

(43) All interested parties were given the opportunity to comment on the choice of the analogue country.

(44) The European Fertilisers Importers Association, EFIA, proposed Algeria or Russia as better options, given their privileged access to the main raw material, namely gas, and since they were market economy countries subject to the same investigation. In this respect, it should be pointed out that Article 2(7)(a) requires, before any further considerations, an 'appropriate' market economy third country. While access to raw materials is an important factor as regards the choice of the analogue country, it should also be noted that the existence of dual pricing in relation to gas in these two countries made in fact these two countries an inappropriate choice. Indeed, the gas prices

([1]) Regulation (EC) No 2117/2005, Article 2.

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charged in these two countries to their domestic customers do not reflect the market value.

(45) Some interested parties alleged, although without substantiating their claim, that Russian and Algerian production processes are more similar to the ones in Belarus and Ukraine. Algeria was also suggested as having a more similar level of production to Ukraine. In this respect, it must be stressed that Belarus, Ukraine and the USA have all fully vertically integrated producers, which is definitely not the case for Algeria.

(46) A Ukrainian cooperating producer proposed Bulgaria or Romania rather than the USA. However, its proposal was not substantiated. In addition, an important factor against Bulgaria or Romania is that their domestic markets are small with a limited number of manufacturers, contrary to the USA.

(47) Therefore, the investigation confirmed that the USA was an appropriate analogue country. Various producers and producers' associations in the USA were contacted and invited to cooperate through the completion of a questionnaire. One producer in the USA fully cooperated in the investigation. Consequently, calculations were based on the verified information from the sole USA cooperating producer, which provided a complete questionnaire reply.

2.2.2. Belarus

Preliminary remarks

(48) The sole cooperating producer in Belarus was the only exporting producer from that country, but it had no export sales to the Community in the RIP.

(49) Since there were no exports to the Community for a representative dumping finding in the RIP, and in order to establish whether dumping would be likely to recur should measures be repealed, the pricing behaviour of the cooperating exporting producer to the USA, its sole export market, and its production capacity and stocks were examined. The analysis was based on the information provided by the cooperating exporting producer mentioned in recital 48.

Comparison

(50) Data from the cooperating exporting producer showed that export prices to third countries (USA) were lower than the constructed normal value for Belarus. In fact, the investigation established that overall this price difference ranged in the RIP between 10 % and 15 %. This may indicate a likelihood of recurrence of dumping on exports to the Community should measures be repealed. Stocks and production capacity, as well as a comparison of these export prices with the prevailing price level in the Community, are examined below.

2.2.3. Ukraine

Preliminary remarks

(51) Two exporting producers cooperated in the investigation, but none of them had export sales to the Community in the RIP. There are no indications that there were more exporting producers in Ukraine.

(52) Since there were no exports to the Community for a representative dumping finding in the RIP, and in order to establish whether dumping would be likely to recur should measures be repealed, the pricing behaviour of the cooperating exporting producer to the USA, its sole export market, and its production capacity and stocks were examined. The analysis was based on

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the information provided by the two cooperating exporting producer mentioned in recital 51.

(53) The two cooperating exporting producers represented 48 % of imports into the USA of the product concerned originating in Ukraine during the RIP. The remainder of the imports in the USA originating in Ukraine were also produced by one of the cooperating producers, but exported by an unrelated Ukrainian company, which does not produce UAN.

Comparison

(54) Data from the cooperating exporting producers showed that export prices to third countries were lower than the constructed normal value for Ukraine. In fact, the investigation established that overall this price difference ranged in the RIP between 20 % and 30 %. This may indicate a likelihood of recurrence of dumping on exports to the Community should measures be repealed. Stocks and production capacity, as well as a comparison of these export prices with the prevailing price level in the Community, are examined below.

2.2.4. Russia

Preliminary remarks

(55) Two exporting producers belonging to the same group of companies cooperated in the investigation, but no exporting producer had export sales to the Community in the RIP.

(56) It is known that there was one producer in Russia in the RIP which did not cooperate in the investigation. For those non-cooperating exporting producer(s), the information available from Eurostat and other sources was analysed. On that basis it was found that exports of UAN to the Community from other than the cooperating producers were also non-existent. However, no reliable information as to the production capacity and production volumes, stocks and sales was available for the non-cooperating company. In this respect, and in the absence of any indication of the contrary, it was considered that findings for the non-cooperating company would be in line with those established for cooperating companies.

(57) Since there were no exports to the Community for a representative dumping finding in the RIP, and in order to establish whether dumping would be likely to recur should the measures be repealed, the pricing behaviour of the cooperating exporting producers to other export markets and their production capacity and stocks were examined. The analysis was based on the information provided by the cooperating exporting producers mentioned in recital 55.

Comparison

(58) It was examined whether the costs associated with the production and sales of the product under consideration were reasonably reflected in the records of the parties concerned. As regards gas costs, it was found that the domestic gas price paid by the Russian producers was around one fifth of the export price of natural gas from Russia. In this regard, all available data indicates that domestic gas prices in Russia were regulated prices, which are far below market prices paid in unregulated markets for natural gas. Therefore, as provided for in Article 2(5) of the basic Regulation, the gas costs borne by the Russian producers were adjusted on the basis of information from other representative markets. The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs. Waidhaus, being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be

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considered a representative market within the meaning of Article 2(5) of the basic Regulation.

(59) The construction of the normal value was done on the basis of the manufacturing costs of the product type exported, after the adjustment for the gas cost mentioned in recital 58, plus a reasonable amount SG&A costs and for profits, in accordance with Article 2(3) and Article 2(6) of the basic Regulation.

(60) As for Algeria, SG&A costs and profit could not be established on the basis of the chapeau of Article 2(6), first sentence, of the basic Regulation because the related manufacturers did not have representative domestic sales of the product concerned in the ordinary course of trade. Article 2(6)(a) of the basic Regulation could not be applied, since there are only these two producers subject to the investigation. Article 2(6)(b) was not applicable either, since the manufacturing costs for products belonging to the same general category of goods would also need to be adjusted in respect of gas costs, for the reasons indicated in recital 58 above. As it was found to be impossible to establish the magnitude of the necessary adjustment for all products belonging to the same general category of goods sold domestically, it is equally impossible to establish the profit margins after such adjustment. Therefore, SG&A costs and profit were established pursuant to Article 2(6)(c) of the basic Regulation.

(61) As in the case of Algeria and for the same reasons as explained in recital 31, SG&A costs and profit were established on the basis of the weighted average SG&A costs and profit from the same three North American producers. It should be noted that the amount for profit so established did not exceed the profit realised by the Russian producers on sales of products of the same general category on their domestic market.

(62) It was found that the export sales of the two cooperating producers were made on the basis of an agent agreement through two related traders, one located in Switzerland and the other one on the British Virgin Islands. The latter ceased to operate at the beginning of 2005. The export price was established on the basis of export prices actually paid or payable to the first independent customer in the USA, their major export market.

(63) Data from the two related traders showed that export prices to third countries were lower than the constructed normal value in Russia. In fact, the investigation established that overall this price difference ranged in the RIP between 2 % and 6 %. This may indicate a likelihood of recurrence of dumping on exports to the Community should measures be repealed.

2.3. *Spare capacity in Belarus, Russia and Ukraine*

(64) The possible effects of existing spare capacity were also examined. Neither Russia nor Ukraine has a relevant domestic market for UAN. On the contrary, Belarus is considered to have a considerable domestic market for this product.

(65) The Belarusian sole producer managed to increase its production by 14 % during the period considered, and was producing close to full capacity during the RIP. Its production capacity during the same period remained stable. It sold around 60 % of its production domestically, the remainder being exported to the USA. It therefore appears that this producer does not have any spare production capacity readily available.

(66) The Russian sole cooperating producer increased its production by 78 % during the period considered. Its production capacity during the same period remained stable. However, according to the information submitted, this producer still has significant available capacity of around 600 000 to 700 000 tonnes to increase its production of UAN, and could, should measures be

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repealed, use this spare capacity to increase exports to the Community market. Investment made by the company during the period considered suggests a potential further increase in production capacity. It is estimated that Russian overall spare capacity is at least the known 600 000 to 700 000 tonnes, which constitutes around 20 % of Community consumption. Exports to third countries grew by 79 % during the period considered.

(67) At the same time, the domestic sales of the sole cooperating Russian producer remained at a low level, representing on average less than 5 % of total sales. Since the domestic market cannot absorb the increase in production, any increase in production is likely to be exported.

(68) As to Ukraine, the two cooperating producers managed to increase production twelvefold during the period considered. Production capacity during the same period increased almost fivefold. In addition, they have considerable spare capacity to increase exports to the Community market in significant volumes should measures be repealed. It is estimated that Ukrainian overall spare capacity amounts to 700 000 to 800 000 tonnes, which constitutes around 20 % of Community consumption. Exports to third countries increased by eightfold during the period considered.

(69) Ukrainian domestic sales remained at a low level during the period considered, representing on average less than 2 % of total sales. It should be noted that growth of the domestic market cannot absorb the increase in production and therefore any increase in production is likely to be exported.

(70) On the basis of the above, it can be concluded that the cooperating producers, with the exception of Belarus, have substantial spare capacity to increase their exports to the Community market should measures be repealed.

2.4. *Relationship between export prices to third countries and the prevailing price level in the Community*

(71) It should be noted that the generally prevailing price level of the Community producers in the Community was lower than the average export price level of the exporting producers to third countries during the RIP, especially to the USA. This is explained by the fact that gas prices, which constitute more than 50 % of the manufacturing costs, and thus UAN prices, were higher in the USA than in Europe, and that accordingly UAN traded at a higher price in the USA.

(72) It should be noted that the export prices from the countries concerned to the USA were on average lower than the respective normal values, even though the prevailing price level in the USA was higher than prices in the Community. It can therefore be concluded that any sales to the EC market would most probably be at dumped prices.

2.5. *Incentive to shift sales from other markets to the Community*

(73) With regard to Belarus, there is a rapidly growing domestic market on which the sole producer sells two thirds of its production. Given that the domestic price is less than a half of the prevailing price in the Community during the RIP, there is likelihood that a rational economic decision leads the Belarusian producer to redirect significant quantities currently sold on the domestic market to the Community market at dumped prices.

(74) In this respect, it should also be noted that the Belarusian producer who is currently exporting the remaining third to other markets would have considerable transport cost advantages when exporting to the Community instead, given its proximity to

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the Community border compared to other potential export markets for the Belarusian producer such as the USA, Argentina or Australia.

(75) In the light of the above, there is likelihood that the Belarusian producer would redirect significant parts of its sales to the Community at dumped prices, should measures be repealed, as there are strong economic incentives.

Conclusions on the likely export behaviour for Belarus, Russia and Ukraine

(76) As already explained in recital 20, in the absence of exports to the Community during the RIP by Belarus, Russia and Ukraine, dumping from these countries could not be established in respect of exports to the Community. However, as explained in section 2, the investigation has shown that on the basis of calculations carried out by using data relating to actual exports from these countries to their major export market, the USA, that there was a likelihood of recurrence of dumping.

3. **Conclusion on the likelihood of continuation or recurrence of dumping**

(77) On the basis of the analysis carried out in sections 1 to 5, it is concluded that should measures be repealed, there is likelihood that additional production would be exported to the Community, or sales currently exported to countries outside the Community or sold on the domestic markets would be redirected towards the Community market in significant quantities. It is likely that these exports to the Community will be made at dumped prices, in particular to regain lost market shares in the Community. It can therefore be concluded that, should measures be repealed, future exports to the Community would be made in increased quantities at dumped prices. Moreover, it should be noted that overseas markets are subject to higher transportation costs than the Community market, namely when considering sales from neighbouring countries, such as Belarus and Ukraine to Eastern Europe or Algeria to Southern Europe.

(78) As regards imports into the Community originating in Algeria, since they are still made at dumped prices, and also on the above analysis of spare capacities and the comparison of price levels, dumping from Algeria is likely to continue in the future. Given that the Community was the only export market for Algeria during the RIP, it is highly likely that Algerian exporters would direct their increased export volumes mainly to this market.

(79) In the light of the above, it is concluded that there is likelihood of continuation (from Algeria) and recurrence (from Russia, Belarus and Ukraine) of dumping should measures be repealed.

D. **INJURY**

1. **Definition of the Community industry**

(80) Within the Community, the product concerned is manufactured by 12 producers whose output constitutes the total Community production within the meaning of Article 4(1) of the basic Regulation.

(81) It should be noted that as compared to the original investigation, the ‘Hydro Agri’ companies have been renamed ‘Yara’. Five companies have become part of the Community industry due to the enlargement of the European Union in 2004.

(82) Out of the 12 Community producers, 10 companies cooperated with the investigation out of which nine were mentioned in the review request. The remaining two producers (other Community

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producers) remained silent. Accordingly, the following 10 producers agreed to cooperate:

— Achema AB (Lithuania),

— AMI Agrolinz Melamine International GmbH (Austria),

— DSM Agro (The Netherlands),

— Duslo AS (Slovakia),

— Fertiberia SA (Spain),

— Grande Paroisse SA (France),

— Lovochemie AS (Czech Republic),

— Nitrogénművek Rt (Hungary),

— SKW Stickstoffwerke Piesteritz GmbH (Germany),

— Yara (The Netherlands, Germany, Italy and the United Kingdom).

(83) As these 10 Community producers accounted for 75 % of the total Community production during the RIP, it is therefore considered that the above 10 Community producers account for a major proportion of the total Community production of the like product. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Community industry'.

(84) As indicated under recitals 10, 15 and 16, a sample consisting of four companies was selected. All sampled Community producers cooperated and sent questionnaire replies within the deadlines. In addition, the remaining complainant producers and producers supporting the investigation duly provided certain general data for the injury analysis.

2. **Situation on the Community market**

2.1. *Consumption in the Community market*

(85) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the sales volumes of the other Community producers on the Community market, and Eurostat data for all EU imports. Given the enlargement of the European Union in 2004, for the sake of clarity and consistency of the analysis, the consumption was established on the basis of the EU-25 market throughout the period considered.

(86) Between 2002 and the RIP, Community consumption increased moderately by 8 %. The increase recorded in 2004 is mainly attributed to the implementation of the common agricultural policy in the new Members States after their accession to the European Union. From 2004, farmers in the new Member States had additional funding available to them which led to increased usage of fertilisers.

	2002	2003	2004	RIP
Total EC consumption in tonnes	3 425 381	3 579 487	3 740 087	3 694 532
Index (2002 = 100)	100	104	109	108

2.2. *Imports from the countries concerned*

2.2.1. Cumulation

(87) In the original investigation imports of the product concerned originating in Algeria, Belarus, Russia and Ukraine were

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assessed cumulatively in accordance with Article 3(4) of the basic Regulation. It was examined whether a cumulative assessment was also appropriate in the current investigation.

(88) In this respect, it was found that there were no imports of the product concerned from Ukraine throughout the period considered and no imports from Belarus and Russia in 2004 and the RIP. Therefore, the conditions set out in Article 3(4) of the basic Regulation to assess cumulatively imports of the product concerned from these countries with imports of the product concerned from Algeria were not fulfilled.

(89) In the light of the above, it was considered that all four countries should be examined separately.

2.2.2. Volume, market share and prices of imports from each of the countries concerned

(90) With respect to the three countries concerned with exports to the Community during the period considered, the volumes, market shares and average prices per country developed as set out below. The following quantity and price trends are based on Eurostat.

	2002	2003	2004	RIP
Volume of imports from Algeria (tonnes)	97 378	239 348	219 680	177 383
Market share	2,8 %	6,7 %	5,9 %	4,8 %
Prices of imports from Algeria (EUR/tonne)	96	99	117	131
Volume of imports from Belarus (tonnes)	101 479	44 438	—	—
Market share	3,0 %	1,2 %	—	—
Prices of imports from Belarus (EUR/tonne)	74	64	—	—
Volume of imports from Russia (tonnes)	81 901	81 809	—	—
Market share	2,4 %	2,3 %	—	—
Prices of imports from Russia (EUR/tonne)	64	70	—	—

(91) The volume of imports from Algeria, although decreasing slightly as from 2003 onwards, gained a further 2 percentage points of market share during the period considered, whereas the prices evolved positively from 96 to 131 EUR/tonne. Regarding Belarus and Russia, their respective import volumes decreased substantially and completely ceased from 2004 onwards.

(92) The investigation showed that imports from Algeria were not undercutting the Community industry prices during the RIP. As for the remaining countries, in the absence of imports during the RIP, a comparison of their export prices to third countries during the RIP with the Community industry prices on the Community market has equally shown no undercutting.

2.3. *Imports from other countries*

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

	2002	2003	2004	RIP
Volume of imports from Romania (tonnes)	69 733	79 137	257 113	142 288

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	2002	2003	2004	RIP
Market share	2 %	2,2 %	6,9 %	3,9 %
Prices of imports from Romania (EUR/tonne)	94	102	112	123
Volume of imports from USA (tonnes)	26 024	57	20	6
Market share	0,7 %	0,0 %	0,0 %	0,0 %
Prices of imports from USA (EUR/tonne)	86	289 (*)	1 101 (*)	1 664 (*)

(*) Given the given the negligible quantities, these prices cannot be considered reliable.

(94) In the case of Romania, a substantial increase of imports was recorded in 2004 gaining a market share of 6,9 %, which nevertheless dropped down to 3,9 % during the RIP in spite of favourable Community market conditions. This development should be seen against the background of the sharp increase of Romanian exports to the USA market, which, in terms of volume, represented more than three times the volumes of Romanian exports to the Community during the RIP. As regards the prices, they have increased steadily throughout the period considered and were consistently higher than the sampled Community industry's prices in 2004 and the RIP. On this basis, it is not considered that Romanian exporting producers can constitute a threat of material injury to the Community industry. Import from the USA, which only had a market share of 0,7 % in 2002, decreased dramatically to 6 tonnes in the RIP. This trend reflects the fact that sales prices in the USA were higher than sales prices to the EC until the end of the RIP so that there was no incentive for USA producers to export to the EC.

(95) The European Fertiliser Import Association (EFIA) argued that since the Romanian exports to the Community market do not constitute a threat of material injury although their increase in volume is higher than that of Algerian exports and their prices lower than those charged by Algerian exporters, equally the Algerian exports should not constitute a threat of material injury. In this respect, it should be noted that indeed for Algeria, as indicated in recital 92, no undercutting was found and Algeria was not found to have caused material injury to the Community industry during the period considered. However, the analysis for that country developed in section 4 showed that there is a likelihood of recurrence of injury. In contrast, as anti-dumping duties were not applicable to imports of UAN originating in Romania, this country was not subject to an injury recurrence test pursuant to Article 11(2) of the basic Regulation. On this basis, the argument was rejected.

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

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

3.1. *Preliminary remarks*

(97) In view of the fact that sampling had been used with regard to the Community industry, the injury has been assessed both on the basis of information collected at the level of the entire Community industry (C.I. in the enclosed tables) and on the basis of information collected at the level of the sampled Community producers (S.P. in the enclosed tables).

(98) Where recourse is made to sampling, in accordance with established practice, certain injury indicators (production, production

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capacity, stocks, sales, market share, growth and employment) are analysed for the Community industry as a whole, while those injury indicators relating to the performances of individual companies, i.e. prices, costs of production, profitability, wages, investments, return on investment, cash flow and ability to raise capital are examined on the basis of information collected at the level of the sampled Community producers.

3.2. *Data relating to the Community industry as a whole*

(a) Production

(99) The Community industry's production increased by 5 % between 2002 and the RIP, i.e. from a level of around 2,8 million tonnes in 2002 to a level of around 3 million tonnes in the RIP. Specifically, production decreased by 3 % in 2003, before increasing by 2 percentage points in 2004 and by a further 7 percentage points in the RIP.

	2002	2003	2004	RIP
C.I. production (tonnes)	2 843 529	2 768 258	2 823 972	3 003 918
Index (2002 = 100)	100	97	99	106

Source: Complainants, sampling questionnaire replies and verified questionnaire replies.

(b) Capacity and capacity utilisation rates

(100) Production capacity remained practically stable throughout the period considered. In view of the growth in production, the resulting capacity utilisation increased, from a level of 57 % in 2002 to a level of 60 % in the RIP. As already noted in the original investigation, capacity utilisation for this type of production and industry can be affected by the production of other products which can be produced on the same production equipment.

	2002	2003	2004	RIP
C.I. production capacity (tonnes)	4 984 375	4 944 575	4 941 975	4 955 075
Index (2002 = 100)	100	99	99	99
C.I. capacity utilisation	57 %	56 %	57 %	61 %
Index (2002 = 100)	100	98	100	106

(c) Stocks

(101) The level of closing stocks of the Community industry increased progressively throughout the period considered. At the end of the RIP (30 June 2005), the stock level was relatively low but this is due to the fact that for this type of product, always, the stock levels are much lower in summer than in winter as the sales' peak is in spring and early summer. By the end of 2004, the level of stocks was 13 % higher than by the end of 2002.

	2002	2003	2004	RIP
C.I. closing stocks (tonnes)	276 689	291 085	313 770	159 926
Index (2002 = 100)	100	105	113	58

(d) Sales volume

(102) The sales by the Community industry on the Community market decreased by 3 % between 2002 and the RIP. This development

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is opposite to the evolution of consumption on the Community market, which increased by 8 % during the same period (see recital 86). The overall increase in production volumes is explained by the strong export performance of the Community industry during the same period. The table below shows the export volumes of the sampled Community producers whose main destination was the USA market.

	2002	2003	2004	RIP
C.I. EC sales volume (tonnes)	2 800 226	2 641 000	2 604 215	2 722 174
Index (2002 = 100)	100	94	93	97
S.P. sales volume to third countries (tonnes)	176 269	194 543	228 937	328 796
Index (2002 = 100)	100	110	130	187

(e) Market share

(103) The market share held by the Community industry decreased substantially between 2002 and the RIP. Specifically, the Community industry lost 8 percentage points of market share during the period considered, while the Algerian producers increased their market share from 2,8 % to 4,8 % during the same period.

	2002	2003	2004	RIP
Market share of Community industry	81,7 %	73,8 %	69,6 %	73,7 %
Index (2002 = 100)	100	90	85	90

(f) Growth

(104) The Community industry lost a significant part of its market share, to the benefit of the Algerian, Romanian and other Community producers who gained market share during the same period.

(105) The loss of market share can also be attributed to the rational decision made by the Community industry to increase its exports to the USA market in order to benefit from the much higher UAN prices prevailing on that market. However, in view of its large spare production capacity, the Community industry could not benefit from the growth of the Community market which was observed during the period considered.

(g) Employment

(106) The level of employment of the Community industry increased by 5 % between 2002 and the RIP. This relatively small increase should be mainly attributed to the improved export performance of the Community industry.

	2002	2003	2004	RIP
C.I. employment product concerned	827	819	790	867
Index (2002 = 100)	100	99	96	105

(h) Productivity

(107) Productivity of the Community industry's workforce, measured as output per person employed per year, remained fairly stable between 2002 and the RIP.

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	2002	2003	2004	RIP
C.I. productivity (tonnes per employee)	3 437	3 380	3 573	3 463
Index (2002 = 100)	100	98	104	101

(i) Magnitude of dumping margin

(108) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume of the imports from Algeria (accounting for up to 6,7 % of the Community market during the period considered), this impact cannot be considered to be negligible, especially in a highly volatile market in terms of prices like the one of the product concerned. No conclusion can be drawn with regard to Belarus, Russia and Ukraine as imports from these countries ceased in 2003.

3.3. *Data relating to the sampled Community producers*

(a) Sales prices and factors affecting domestic prices

(109) The sampled Community industry producers' average net sales price increased substantially in 2004 and the RIP reflecting thus the prevailing favourable international market conditions of the product concerned during the same period. This growing trend should be seen in conjunction with the similar evolution of the cost of the principal raw material, i.e. gas, as the below table illustrates.

	2002	2003	2004	RIP
S.P. unit price EC market (EUR/tonne)	85	89	109	114
Index (2002 = 100)	100	105	128	134
S.P. gas price/MBTU (indexed)	100	107	111	126

(b) Wages

(110) Between 2002 and the RIP, the average wage per employee increased by 9 %, as the table below shows.

	2002	2003	2004	RIP
S.P. annual labour cost per employee (000 EUR)	23,4	25,4	27,0	25,6
Index (2002 = 100)	100	108	115	109

(c) Investments

(111) The annual flow of investments in the product concerned made by the four sampled producers developed positively during the period considered. These investments referred mainly to replacement of old machines. This shows the efforts of the Community industry to continuously improve its productivity and competitiveness. However, the results are not apparent in the evolution of productivity which remained rather stable (see recital 107) during the same period reflecting thus the difficulties of the Community industry to boost its production output.

	2002	2003	2004	RIP
S.P. net investments (000 EUR)	12 512	20 087	12 611	17 047
Index (2002 = 100)	100	161	101	136

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(d) Profitability and return on investments

(112) Profitability of the sampled producers shows a gradual improvement notably since 2003 and reached the level of 13,8 % during the RIP. At the end of the period considered the profitability reached its peak on this price-cyclical market. Indeed, numerous factors, including external ones, can affect world markets prices for UAN and other nitrogenous fertilisers. Such factors can result in either additional supply or reduced demand for these products, thereby influencing product pricing. During the period considered, due to tight supply the world market prices moved upwards. In 2002 and 2003, the profit levels found were, however, moderate and below the levels considered reasonable by the Community industry in view of the fact that this industry is highly capital-intensive. The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the above profitability trend over the whole period considered.

	2002	2003	2004	RIP
S.P. profitability of EC sales to unrelated customers (% of net sales)	8,1 %	6,0 %	12,3 %	13,8 %
Index (2002 = 100)	100	74	151	170
S.P. ROI (profit in % of net book value of investment)	22 %	24 %	50 %	58 %
Index (2002 = 100)	100	111	229	265

(e) Cash flow and ability to raise capital

(113) Cash flow has increased significantly during the period considered. This development is in line with the development of the overall profitability during the period considered.

	2002	2003	2004	RIP
S.P. cash flow (000 EUR)	23 532	19 625	39 767	50 823
Index (2002 = 100)	100	83	169	216

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

3.4. *Conclusion*

(115) Between 2002 and the RIP, the following indicators developed positively: production volume of the Community industry increased, unit sales prices of the Community industry increased and profitability improved substantially in line with the prices. Exports to third countries increased and return on investment and cash flow evolved positively as well. Wages developed moderately and the Community industry continued to invest.

(116) Conversely, the following indicators developed negatively: sales volumes on the Community market decreased by 3 % as opposed to a growing market. Accordingly, the market share of the Community industry decreased substantially by 8 percentage points during the period considered. The productivity remained rather stable despite the efforts of the Community industry to improve it through investments.

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(117) Overall, the situation of the Community industry has improved significantly as compared to its situation prior to the imposition of the anti-dumping measures on imports of UAN from the countries concerned in 2000. It is therefore clear that these measures had a positive impact on the economic situation of the Community industry. Nevertheless, it should be stressed that the positive development of certain indicators can also be partly attributed to the market of the like product, which was, due to the tight worldwide supply, very favourable during the two last years of the period considered. Furthermore, the positive development of the Community industry's export performance has also contributed to the overall positive evolution of the Community industry counterbalancing to a certain extent the shrinking market share within the Community.

(118) It is therefore concluded that the situation of the Community industry has improved, as compared to the period preceding the imposition of measures, but is still fragile.

4. **Likelihood of recurrence of injury**

4.1. *General*

(119) Since there is no continuation of material injury caused by imports from the four countries concerned, the analysis focused on the likelihood of recurrence of injury. In this respect, two main parameters were analysed: (i) the gas cost in the countries concerned and its impact on the UAN production cost, and (ii) the effect of the projected export volumes from the countries concerned to the Community on the Community industry, taking into account the conditions of competition.

4.2. *Likely evolution of sales prices: Gas prices and cost of production in the countries concerned*

(120) The likelihood of the recurrence of injury will depend strongly on the likely price evolution of UAN. As gas is by far the most important cost element representing more than 50 % of the UAN cost of production when purchased at world market prices, and is therefore a determining factor in the selling price of UAN. The gas cost in the UAN production depends on the gas efficiency use and the unit price. An analysis of these two parameters in the production cost of UAN for the Community industry, on one side, and for Russia and Algeria, on the other side, has been conducted.

(121) From this analysis it was firstly shown that gas efficiency is an important factor in establishing the cost of gas per tonne of UAN produced. In this respect, it was found that the gas efficiency of the Community industry was relatively high, reaching up to 15 % lower consumption of gas per tonne of UAN produced than that of the producers in Russia and Algeria. This is the result of the Community industry's efforts to continuously improve its productivity and competitiveness through appropriate investments requiring a yearly capital inflow approximating in average one third of its total net book-value assets. This comparative advantage should benefit the Community industry and result in a lower cost of production of UAN.

(122) Despite this efficiency, the Community industry ends with a gas cost per tonne of UAN produced around threefold higher than that of Russia and Algeria because of the gas price difference. The artificially low gas prices in these two countries fully explain the difference. The consequent price difference of UAN in these two countries as compared to producers purchasing gas at world market prices, like those in the Community, is unlikely to be reduced in the near future. On the contrary, should the current pattern in the development of the world market gas prices in the forthcoming years be maintained, this gap may be further

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broadened. On this basis, it is considered that producers in Russia and Algeria will continue to have this artificial cost advantage, which overcomes largely the high transport costs due to the weight of UAN. This renders the Community market attractive to producers even located in remote areas in these countries bearing transport costs higher than 20 % of the price.

(123) In the light of those low gas prices, the exporting producers in Russia and Algeria will thus very likely have the possibility to export the product concerned to the Community at lower prices than the Community industry's cost of production. Therefore, it is very likely that those imports would undercut the C.I.'s prices substantially.

(124) As for Belarus and Ukraine, they are not included in this analysis since for the purpose of this investigation both were considered to be non-market economy countries and therefore their data on cost of production were not requested. However, specific data concerning gas prices in these two countries were acquired and the investigation has shown that the producers in these countries were being supplied with gas in the RIP at substantially lower prices than the prices charged to the Community industry. It is therefore considered that both countries will equally have the possibility to export the product concerned at lower prices than the Community industry's cost of production and it can also be concluded that there is likelihood that those prices would undercut the C.I.'s prices.

(125) Should measures lapse, the fact that the Belarusian, Russian and Ukrainian exporters would need to re-establish themselves on the Community market and the Algerian exporters would need to strengthen their market position may also support the view that there is a likelihood that those producers would charge lower prices than the C.I. in order to regain lost market share or broaden their customer base.

(126) EFIA and certain exporting producers argued that lower costs of production could not be considered as a valid reason to justify the likelihood of recurrence of injury. It was further submitted that the possibility to undercut is not the legal standard to establish whether injury is likely to recur. Moreover, Algeria charged prices above the Community industry's prices and Belarus, Russia and Ukraine did not export to the Community at all in 2004 and the RIP and their prices to third countries were above the Community industry's prices, which are considered to be non-injurious. This evidence would demonstrate, according to EFIA, that the exporting producers are not relying on their lower gas cost by setting lower prices, but on the contrary charge higher prices and rather aim to maximise their profit margin.

(127) The rationale behind the establishment of likelihood of recurrence of injury is indeed whether the expiry of the measures would create conditions that would encourage the recurrence of injury. In this respect, it should be firstly noted that, as the parties acknowledge, the exporting producers in the countries concerned benefit from low gas prices, which offer them the discretion to undercut the Community industry's prices. On the other side, the investigation showed that their exports during the RIP were dumped. This pricing behaviour was seen in the light of (i) the exporters' significant spare export capacity, and (ii) their substantially lower cost of production. The first indicates their strong incentive to find the markets for selling their production. The second shows their capability to undercut severely the Community industry prices, in order to meet their sales requirements in volume.

(128) With regard to the prices, it should be recalled that during the last two years of the period considered, favourable market conditions

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kept the prices at a very high level irrespective of the applicable anti-dumping measures. Indeed, during that period, a tight worldwide supply demand balance resulted in high prices for all nitrogen fertilisers. UAN is like the other nitrogen fertilisers a commodity whose pricing is influenced by numerous factors, going from the volatile gas price having a considerable impact on the supply as being the most important costing element to the weather conditions, crops and grain stock levels resulting in reduced or increased demand. With particular regard to the Community market, the demand for nitrogen fertilisers is expected to slightly decrease in the forthcoming years ([1]). The maintenance of such high prices depends therefore on a tight supply, which is nevertheless very unlikely, as the investigation showed, given the spare export capacity of the countries concerned and the likelihood of redirection of part of their exports to third countries during the RIP, should the measures be lapsed. This scenario will very likely lead the exporting producers to lower their prices undercutting the prices of the Community industry, in order to gain market share and meet their requirements in export volumes. Under such circumstances, the Community industry would be forced either to lower its prices to a level close to or below the cost of production given the maintained high cost of gas or to lose significant market share and thus revenue, or both. An increase of exports to the USA market is highly unlikely due to the reasons set out in recital 135. Therefore, a deterioration of the Community industry's overall performance would be the inevitable consequence of the repeal of the measures.

(129) With regard to the profit-maximising argument, it should be noted that this is based on the positive price differential observed during the period considered between the USA and the Community market, which nevertheless cannot be considered as an appreciation element for the future prices of a highly volatile commodity such as UAN. On the basis of the above, it was established that there is a high risk of recurrence of injury, should the measures be repealed, and therefore the argument was rejected.

4.3. *Impact on the Community industry of the projected export volumes and price effects in case of repeal of measures*

4.3.1. Preliminary remarks — Conditions of competition

(130) UAN is a liquid fertiliser supplying nitrogen to crops. It is mainly used as a pre-planting fertiliser for arable crops, which require UAN usually in the spring time. UAN has a limited interchange-ability with the other nitrogen fertilisers as farmers use different equipment for applying UAN and it can be mixed with other solutions, such as pesticides, for a single application. Demand is therefore characterised by seasonal peaks and is relatively inelastic.

(131) Although UAN is generally consumed seasonally, it is produced throughout the year as this is more efficient than ceasing production. As a result, Community producers are found with peak inventories during autumn and winter. Massive imports of the product concerned at depressed prices during spring and summer will very likely have a significant adverse effect on the Community industry's prices for such a highly volatile commodity as the product concerned, for which prices are set on a weekly basis.

([1]) Source: 'Global fertilisers and raw materials supply and supply/demand balances: 2005-2009', A05/71b, June 2005, International Fertiliser Industry Association.

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4.3.2. Exports from the countries concerned

(132) Given the absence of exports from the countries concerned except Algeria during the RIP, the analysis is focused on the likelihood of redirection of exports made to other countries during the RIP towards the Community market in the imminent future. In addition, the likely evolution of sales prices of UAN has to be analysed.

(133) Regarding the likely evolution of exports to the Community market, it should be noted that imports of UAN into the USA market originating in Belarus, Russia and Ukraine were subject to anti-dumping measures until their repeal in April 2003. The table below shows the export development of these three countries to the USA market as of 2003:

Exports to the USA market from:	2003 (*)	2004	RIP (**)
Belarus in tonnes	156 596	244 526	227 772
Russia in tonnes	179 993	614 395	699 100
Ukraine in tonnes	111 321	103 440	145 828
Total in tonnes	447 910	962 361	1 072 700

(*) The figures include the first three months of 2003, i.e. the period within which the measures were still in place.
(**) The RIP is considered for the sake of comparison with the overall analysis.
Source: 'Foreign Trade Statistics', published by the US Census Bureau.

(134) On this basis, it is shown that these countries increased significantly their exported volume from 2003 to 2004. In the case of Russia, in particular, the export volume rose from 180 000 tonnes in 2003 to about 600 000 tonnes in 2004, representing a more than threefold increase. The above trade statistics also show that the sharp and sudden increase in export volumes from these countries to the USA came to a halt during the RIP, where the increase in comparison to 2004 was less profound (11 %). The stabilisation of their collective exports volumes to the USA market to around 1 million tonnes was confirmed by these countries' post-RIP export performance to the USA.

(135) In the final report of the USA anti-dumping investigation on UAN imports from Belarus, Russia and Ukraine, the reason for this stabilisation is described in detail ([1]). In this report, it is specifically stated that the high ratio of inland transportation costs means that the market for imports is virtually limited to the coastal areas and that these costs make final sales of imported UAN to many areas of the USA, including the important UAN consumption States in the so-called 'farm belt' area, far too expensive as compared to locally produced UAN. In other words, there is a limit on the size of the USA market with regard to imports, and the most significant areas in terms of consumption remain shielded from imports due to their location. In view of the observed stabilisation of imports from Belarus, Russia and Ukraine, as described in recital 134 above, it is therefore concluded that the USA market cannot absorb import volumes significantly higher than those registered in the RIP.

(136) In the above context, and in view of the relative proximity of the Community market, it can be concluded that significant sales or spare capacity in the countries concerned, will be very likely directed toward the Community market, should the measures be allowed to lapse. Given the lower level of transport costs as

([1]) 'Urea Ammonium Nitrate Solutions from Belarus, Russia, and Ukraine — Investigations Nos. 731-TA-1006, 1008 and 1009 (Final), Publication 3591', April 2003, US International Trade Commission, p. 25, V-4, V-5.

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compared to exports to the USA market, their export prices can be substantially lower than those prevailing in the USA market. Furthermore, as shown in recitals 50, 54 and 63, it was found that the sales of the cooperating exporting producers on the USA market were made at prices lower than the respective normal values.

4.3.3. Impact of spare capacities

Algeria

(137) It is recalled that the domestic market of the product concerned in Algeria is insignificant and that virtually all production capacity is export oriented. Furthermore, the investigation showed that the current spare capacity of the Algerian producers represent 10 % to 20 % of the consumption on the Community market The total current spare capacity is estimated to be around 300 000 to 350 000 tonnes.

(138) In particular in view of the proximity of the Community market, it is very likely that, if the measures were allowed to lapse, this spare production capacity would be used for production of the product concerned for export to the Community (Algeria only has 4,8 % market share). The expected high volumes would likely be at dumped prices and likely cause injury to the Community producers.

Belarus

(139) It was found that there is a rapidly growing domestic market, on which the sole producer sold two thirds of its production during the RIP. Moreover, there were no exports to the Community in 2004 and the RIP and the exports to USA market have decreased despite the absence of anti-dumping measures and favourable market conditions.

(140) If the measures were allowed to lapse, the situation with regard to Belarus would most likely change dramatically. In view of the fact that the domestic price was less than half of the prevailing market price in the Community during the RIP, a rational economic decision would lead the Belarusian producer to redirect significant quantities currently sold on the domestic market to the Community market at dumped prices. A recurrence of injury caused by high volumes of low prices imports from Belarus would likely be the result.

Russia

(141) The Russian domestic market is relatively small as compared to the spare capacity which, as already mentioned in recital 66, amounts to 600 000 to 700 000 tonnes and which may be substantially increased if the capacities of the non-cooperators or capacities utilised currently in producing and exporting urea and ammonium nitrate, the two other nitrogen fertilisers, are added.

(142) In this respect, it is also worth noting that there are currently trade defence measures imposed by the Community on imports of upstream products, namely solid urea and ammonium nitrate, from Russia [1]. Regarding the measures on urea, an expiry review investigation is currently being carried out [2]. Moreover, an interim review investigation limited to one major Russian exporting producer is currently being carried out with regard to the measures on ammonium nitrate [3]. Therefore,

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[1] Urea: Regulation (EC) No 901/2001 (OJ L 127, 8.5.2001, p. 11). Ammonium nitrate: Regulation (EC) No 658/2002 (OJ L 102, 18.4.2002, p. 1), as last amended by Regulation (EC) No 945/2005 (OJ L 160, 23.6.2005, p. 1).

[2] OJ C 105, 4.5.2006, p. 12.

[3] OJ C 300, 30.11.2005, p. 8.

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depending on the final outcome of these review investigations, there is a risk of shifting of production from those products to UAN, which could then result in an additional substantial increase of the estimated spare capacity of the Russian producers.

(143) In view of the above there is a strong likelihood that exports to the Community will resume if measures were allowed to lapse. The volumes of such imports can conservatively be estimated to represent close to 20 % of the Community market, considering the consumption on that market (see recital 86) and the actual spare capacities in Russia. In view of the extremely low gas prices being paid by the Russian producers and the consequent pricing advantage for the product concerned, such imports would likely cause severe injury to the Community industry.

Ukraine

(144) Among the countries concerned, Ukraine is at this moment the country with the largest spare capacity which is estimated in the range of 700 000 to 800 000 tonnes. The current spare capacity alone accounts for around 20 % of the Community consumption.

(145) In the absence of a significant domestic market and in view of the proximity of the Community market, it is likely that, should the measures lapse, massive exports will be directed to the Community market. These exports will as shown above probably be at dumped levels and thereby cause major injury to the Community industry.

4.4. *Conclusion on likelihood of recurrence of injury*

(146) In view of the artificially low prices the producers in the countries concerned pay for the basic raw material gas, and the impact this has on the production cost of UAN, it is likely that, if the measures were allowed to lapse, the producers in the countries concerned will have the possibility to export the product concerned at lower prices than the Community industry's production cost.

(147) All countries concerned but Belarus have a surplus capacity which could be turned towards the Community market, should the measures lapse. As concerns Belarus, given the high sales volumes on the domestic market at much lower prices than those prevailing on the Community market during the RIP, it is very likely that at least part of them would be redirected to the Community market, should the measures lapse. The lower transport costs for sales to the Community as compared to the USA could also stimulate a redirection of sales to the Community market. In addition, for all four countries a redirection of part of their current exports from other countries to the Community is likely if the current measures were repealed as was demonstrated in recitals 132 to 136.

(148) EFIA and certain exporting producers submitted that the assumption of shifting from urea and ammonium nitrate production to UAN ignores the basic economic fact that producers can not simply switch production without additional investments. Furthermore, they claimed that producers will not give up more profitable products just because anti-dumping measures on a less profitable product are removed.

(149) With regard to the additional investments required, it should be noted that most of the major producing exporters of nitrogen fertilisers are integrated producers and therefore the decision on producing/exporting one or the other product depends mainly on the market conditions. As for the profitable products, the producers will indeed look for the most profitable products. In this respect, the anti-dumping measures play a major role in their decision, as this is demonstrated by the significant increase in dumped exports of UAN to the USA market during 2004 and

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the RIP, once the USA anti-dumping measures were repealed in 2003. Therefore, sound economic decisions made by the exporting producers will in all likelihood lead them to switch from one product to the other for maintaining or increasing their overall sales of nitrogen fertilisers and profits thereof. On this basis, the above arguments were rejected.

(150) The above leads to the conclusion that should measures lapse, exports from the countries concerned would very likely occur in significant volumes and at prices that undercut the Community industry's prices in view of their distorted and artificially low cost of production. This would in all likelihood have the effect of reinforcing the price-depressive trend on the market, with an expected negative impact on the economic situation of the Community industry. This would, in particular, impede the financial recovery that was achieved in 2004 and the RIP, leading to a likely recurrence of injury. In other words, the more the market conditions turn bearish, the sharper the price depression that can be expected from the countries concerned, account being taken of their significant difference in cost of production and their spare capacity.

E. **COMMUNITY INTEREST**

1. **Introduction**

(151) According to Article 21 of the basic Regulation, it was examined whether maintenance of the existing 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.

(152) It should be recalled that, in the original 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, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(153) On this basis, it was examined whether, despite the conclusions on the likelihood of 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**

(154) The Community industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of anti-dumping measures in 2000. In particular, the Community industry improved its profit situation between 2002 and the RIP.

(155) It can reasonably be expected that the Community industry will continue to benefit from the measures currently imposed and further recover by reversing the downward trend in market share and improving further its profitability. Should the measures not be maintained, it is likely that increased imports at dumped prices from the countries concerned will occur thereby causing injury to the Community industry by exerting a downward pressure on the sales prices which will endanger its currently positive but still fragile financial situation.

3. **Interest of importers**

(156) As mentioned in recital 10, only one importer indicated its willingness to be included in the sample and provided the basic information required in the sampling form. However, after sending the full questionnaire to the said importer, it informed

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the Commission that it did not wish to further cooperate with the investigation.

(157) It is recalled that in the original investigation it was found that the impact of the imposition of measures would not be significant to the extent that the imports would continue to take place albeit at non-injurious prices and that as a rule, importers do not only deal in UAN but also, to a significant extent, in other fertilisers. Regarding the presumption that imports would continue to take place, this was only confirmed by imports from Algeria where an undertaking is in place for one exporting producer. This leads to the conclusion that some importers may indeed have had negative consequences from the imposition of measures, as indicated in recital 66 of Commission Regulation (EC) No 617/2000 ([1]). However, the investigation did not show that some of the importers completely ceased their activities, but rather appeared to have focused on different fertilisers as projected. Thus, the imposition of measures appears to have had an overall limited impact on the majority of importers/traders.

(158) In the absence of cooperation from importers, there is no reliable information available indicating that the maintenance of the measures will have a significant negative effect on importers or traders.

(159) EFIA submitted that the non-cooperation of importers should not be considered as a lack of interest from their side but as a reflection of the unfair situation given the significant resources required by an anti-dumping investigation as opposed to their limited resources due to their small or medium size enterprises. Furthermore, they claimed that the investigation ignored the cumulative effect of the numerous anti-dumping measures on fertilisers on importers, and thus failed to apply a fair analysis of the effects on importers and farmers.

(160) In this respect, it should be noted that for importers dealing with a wide range of fertilisers, UAN being one of them, there is the possibility of supplying with the different nitrogen fertilisers from other sources not presently subject to anti-dumping measures. On this basis, it was concluded that any negative impact from the continuation of measures on importers would not be a compelling reason against the continuation of measures.

4. **Interest of users**

(161) Users of UAN are farmers in the Community. Demand for nitrogen fertilisers appears to be relatively inelastic and farmers tend to buy from the cheapest source. In examining the possible effect of the imposition of measures on users, it was concluded in the original investigation that given the small incidence of the cost of UAN on the farmers, any increase in these costs was unlikely to have a significant adverse effect on them. The fact that no users or user association provided any information contradicting the above finding in the framework of the current review investigation seems to confirm that: (i) UAN represents a very small part of total production costs for these farmers; (ii) the measures currently in force did not have any substantial negative effect on their economic situation; and (iii) the continuation of measures would not adversely affect the financial interests of the users.

5. **Conclusion on Community interest**

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

([1]) OJ L 75, 24.3.2000, p. 3.

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F. **ANTI-DUMPING MEASURES**

(163) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.

(164) 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 UAN, originating in Algeria, Belarus, Russia and Ukraine should be maintained. It is recalled that these measures consist of specific duties, with the exception of the imports of the product concerned which are manufactured and sold for export to the Community by one Algerian company from which an undertaking has been accepted,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution falling within CN code 3102 80 00 and originating in Algeria, Belarus, Russia and Ukraine.

2. The amount of duty in euro per tonne shall be as follows:

Country	Manufacturer	Amount of duty (per tonne)	TARIC additional code
Algeria	All companies	EUR 6,88	A999
Belarus	All companies	EUR 17,86	—
Russia	JSC Nevinnomyssky Azot 357030 Russian Federation Stavropol region Nevinnomyssk, Nizyaev st. 1	EUR 17,80	A176
	All other companies	EUR 20,11	A999
Ukraine	All companies	EUR 26,17	—

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

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4. Notwithstanding paragraph 1, the definitive anti-dumping duty shall not apply to imports released into free circulation in accordance with Article 2 or Article 2a.

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

Article 2

1. Imports declared for release into free circulation under the following TARIC additional codes which are produced and directly exported (i.e. shipped and invoiced) by the company named below to a company in the Community acting as an importer shall be exempt

([1]) OJ L 253, 11.10.1993, p. 40.

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from the anti-dumping duty imposed by Article 1 provided that such imports are imported in conformity with paragraph 2 of this Article.

Country	Company	TARIC additional code
Algeria	Fertalge Industries spa 12, Chemin AEK Gadouche Hydra, Alger	A107

2. The exemption shall be conditional upon presentation to the relevant Member State's customs services of a valid undertaking invoice issued by the exporting company containing the essential elements listed in the Annex to this Regulation.

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Article 2a

1. Imports of mixtures of urea and ammonium nitrate for release into free circulation which are invoiced by the company from which an undertaking is accepted by the Commission and whose name is listed in the Commission Decision 2008/649/EC ([1]), as from time to time amended, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the said producer to the first independent customer in the Community, and

— such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in Annex of this Regulation, and

— the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

— whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled, or

— when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

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Article 3

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

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

([1]) OJ L 213, 8.8.2008, p. 39.

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ANNEX

Elements to be indicated in the undertaking invoice referred to in Article 2(2) and Article 2a:

1. The TARIC additional code under which the goods on the invoice may be customs cleared at Community borders (as specified in the appropriate Regulation or Decision).

2. The exact description of the goods, including:

   — CN code,

   — the nitrogen (N) content of the product (in percentages),

   — quantity (to be given in tonnes).

3. The description of the terms of the sale, including:

   — price per tonne,

   — the applicable payment terms,

   — the applicable delivery terms,

   — total discounts and rebates.

4. The name of the unrelated importer to which the invoice is issued directly by the company.

5. The name of the official of the company that has issued the undertaking 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 (EC) No 617/2000 or Decision 2008/649/EC (as appropriate). I declare that the information provided in this invoice is complete and correct.’.