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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 442/2007

of 19 April 2007

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

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 22 January 2001 the Council imposed, by Regulation (EC) No 132/2001 [2], a definitive anti-dumping duty (the existing measures) of EUR 33,25 per tonne on imports of ammonium nitrate (AN) falling within CN codes 3102 30 90 and 3102 40 90 and originating, *inter alia*, in Ukraine. The investigation that led to these measures will be referred to as the original investigation.

(2) On 17 May 2004, following a partial interim review, by Regulation (EC) No 993/2004 [3] the Council exempted from the anti-dumping duties imposed by Regulation (EC) No 132/2001 imports to the Community of the product concerned produced by companies from which undertakings would be accepted by the Commission. By Commission Regulation (EC) No 1001/2004 [4], undertakings were accepted for a period until 20 May 2005. The purpose of these undertakings was to take account of certain consequences of the enlargement of the European Union to 25 Member States.

(3) By Regulation (EC) No 945/2005, following an interim review limited in scope to the definition of the product concerned, the Council decided that the definition of the product concerned should be clarified and that the measures in force should apply to the product concerned when incorporated in other fertilizers, in proportion to their content of ammonium nitrate, together with other marginal substances and nutrients.

2. Request for a review

(4) On 25 October 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 5 May 2005 [5]. This request was lodged by the European Fertilizer Manufacturers Association (EFMA) (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of AN.

(5) The applicant alleged and provided sufficient *prima facie* evidence that there is a likelihood of recurrence of dumping and injury to the Community industry with regard to imports of AN originating in Ukraine (the country concerned).

[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 23, 25.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 945/2005 (OJ L 160, 23.6.2005, p. 1).
[3] OJ L 182, 19.5.2004, p. 28.
[4] OJ L 183, 20.5.2004, p. 13.
[5] OJ C 110, 5.5.2005, p. 15.

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 25 January 2006, by a notice of initiation published in the *Official Journal of the European Union* ([1]), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

3. **Investigation**

3.1. *Investigation period*

(7) The investigation of continuation or recurrence of dumping covered the period from 1 January to 31 December 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*

(8) The Commission officially advised the exporting producers, importers and users known to be concerned and their associations, the representatives of the exporting country, the applicant and the 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.

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

(10) In view of the large number of Community producers and of importers in the Community, 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.

(11) After examination of the information submitted, and given that 10 Community producers indicated their willingness to cooperate, it was decided that sampling was necessary with regard to Community producers. Only one importer provided the information requested in the notice of initiation and expressed its willingness to further cooperate with the Commission services. However, this importer was located outside the Community and had no imports of the product concerned in the Community market during the RIP. It was therefore decided that sampling was not necessary with regard to importers.

(12) 10 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 AN in the Community which can reasonably be investigated within the time available. The four sampled Community producers accounted for 76 % of the total production of the Community industry, as defined in recital (51) below, during the RIP, whilst the above 10 Community producers accounted for 70 % of the total Community production during the RIP.

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

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

(15) Replies to the questionnaires were received from the four sampled Community producers and three producers, thereof two exporting producers, in the country concerned, as well as from one related trader.

(16) Moreover, one producer in the analogue country provided a complete questionnaire reply.

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

(a) related trader to the Ukrainian producer Stirol:

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

(b) producer in the analogue country:

— Terra Industries, Sioux City, Iowa, USA;

([1]) OJ C 18, 25.1.2006, p. 2.

(c) sampled Community producers:

— Terra Nitrogen Limited, Stockton, United Kingdom,

— Grande Paroisse SA, Paris, France,

— Zakłady Azotowe Anwil SA, Poland,

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

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(18) The product concerned is solid fertilizers with an ammonium nitrate content exceeding 80 % by weight originating in Ukraine, falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91. Ammonium nitrate (AN) is a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid, and its nitrogen content exceeds 28 % by weight in prilled or granular form.

(19) It should be noted that the scope of the product concerned was clarified in Regulation (EC) No 945/2005.

2. Like product

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

(21) Three Ukrainian producers of the product concerned cooperated in the investigation. Two of the cooperating producers exported the product concerned during the RIP. There is at least one known non-cooperating producer of the product concerned in Ukraine.

(22) The comparison of the data concerning exports to the Community provided by the exporting producers and the total volume of imports as reported by Eurostat indicated that the two exporting producers accounted for around 60 % of all Community imports from Ukraine during the RIP. It could, however, be established that the vast majority of the remaining 40 % of imports of the product concerned was invoiced in December 2004 (and therefore not reported by the cooperating producers), but entered the Community during the RIP (and was therefore included in the import statistics). Exports invoiced in December 2005 and entering the Community in January 2006, on the other hand, were insignificant. On the basis of this, it was concluded that 85 to 90 % of all Community imports from Ukraine during the RIP have been made by cooperating producers. The level of cooperation is therefore high.

(23) Total imports of the product concerned from Ukraine were small, i.e. less than 1 % when compared to the Community market as a whole.

2. Dumping of imports during the investigation period

2.1. *Analogue country*

(24) Since 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 had to be determined on the basis of data obtained from a producer in a market economy third country, in accordance with Article 2(7) of the basic Regulation. In the notice of initiation, the USA and Romania were envisaged as appropriate analogue countries. It should be recalled that in the original investigation, Poland was selected as an analogue country. Since Poland entered the European Union in May 2004, it is no longer a possible choice. All interested parties were given the opportunity to comment on the choice of the USA and Romania as analogue countries.

(25) However, the analysis carried out subsequent to the publication of the notice of initiation showed that the Romanian market for AN was dominated by imports from Ukraine and Russia, while Romanian producers were very export oriented, selling only insignificant quantities on their domestic market. On the basis of this, it was concluded that, because of the abovementioned structure of its domestic market, Romania cannot be considered the most appropriate choice for the analogue country.

[1] Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17), Article 2.

(26) Only one cooperating producer submitted comments. This cooperating producer proposed Algeria as a better option, given their access to the main raw material, gas. In this respect, it should be pointed out that whether a country has extraction sites of natural gas or not, is not a key element to the choice of the analogue country. The main issue is whether gas prices reflect market value. The existence of dual gas pricing in Algeria is a clear indication that this is not the case and thus makes Algeria a less suitable choice for an analogue country. It is further noted that both the USA and Ukraine are producers and net importers of natural gas, while Algeria is a net exporter of natural gas. In this respect, the USA is more similar to Ukraine than Algeria.

(27) It was furthermore claimed that the USA would not be an appropriate analogue country, as they faced excessive domestic gas prices during the RIP. In this respect, it has to be said that although there were very high gas prices in the fourth quarter of the RIP due to natural disasters, this is a situation which can be easily adjusted for as described in recital (35) below.

(28) The choice of the USA was also contested in respect of the production process. It was alleged that the Algerian production process is more similar to the one in Ukraine. However, the producer failed to substantiate the claim.

(29) In addition, it was claimed that Algeria has a more similar level of production, consumption and consumer demand to Ukraine. According to available information, both the Algerian production [1] and domestic consumption [2] are insignificant. On the other hand, both Ukraine and the USA have a significant production and large domestic markets.

(30) As regards the USA, despite the fact that there were anti-dumping measures in force on imports of AN originating in the country concerned, it was found that it is an open competitive market, where a significant number of domestic producers face a considerable level of competition from foreign imports originating from other third countries. Furthermore, USA producers have representative domestic sales, and have a similar access to raw materials as Ukrainian producers.

(31) Therefore, the investigation established that the USA should be used as an appropriate analogue country. Consequently, calculations were based on the verified information from the sole USA cooperating producer, which provided a complete questionnaire reply.

2.2. *Normal value*

(32) Since Ukraine was not yet considered a market economy country at the time of the lodging of the request for the expiry review, the normal value for Ukraine had to be determined on the basis of data obtained from a producer in the USA, as explained in recital (31) above.

(33) The representativity of domestic sales by the sole cooperating producer of the like product in the analogue country was assessed on the basis of the exports of the two cooperating exporting producers to the Community. It should be noted that only one type of product was exported to the Community. No analysis by product type was therefore carried out.

(34) The domestic sales of the sole cooperating producer of the like product in the analogue country were found to be representative, as they significantly exceeded the volumes of AN exported to the Community by the two Ukrainian cooperating exporting producers.

(35) In order to establish whether domestic sales of the USA producer were made in the ordinary course of trade, domestic sales prices were compared with cost of production. When assessing the cost of production of the USA producer, it was found that it was affected in the fourth quarter by natural disasters. According to information published by this same producer, 'hurricanes in the U.S. Gulf during the third quarter wreaked havoc with natural gas markets and negatively affected our fourth quarter and full year results [3].' Indeed, quoted US gas prices [4] doubled between August [5] and October [6], while in between Hurricanes Katrina (23 to 31 August 2005) and Rita (17 to 26 September 2005) hit the US Gulf coast. As natural gas is the main costing element for producing AN, the effect was significant and would have led to an artificially high constructed normal value. It was therefore decided to establish the cost of production for the fourth quarter 2005 on the basis of the average of the gas prices paid by the producer during the first three quarters of 2005.

[1] Excluding AN production further processed within vertically integrated producers.

[2] *Source:* IFADATA statistics online, International Fertilizer Industry Association.

[3] Terra Industries 2005 Annual Report — from 10-K, p. 6.

[4] Nymex Gas Futures as quoted by Heren EGM.

[5] August futures quoted on 30 June 2005, Nymex Gas Futures, Heren EGM.

[6] October futures quoted on 29 September 2005, Nymex Gas Futures, Heren EGM.

(36) On the basis of the above, the vast majority of domestic sales were found to be profitable, and consequently normal value was established on domestic sales prices to the first independent domestic customer. As the Ukrainian exporting producers only exported one product type to the Community during the RIP, the analysis was limited to this product type.

2.3. *Export price*

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

2.4. *Comparison*

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

2.5. *Dumping margin*

(39) As Ukraine is not considered a market economy for the purpose of this investigation, a country-wide dumping margin 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. As stated in recital (22) above, cooperation was high.

(40) The above comparison showed that dumping (around 30 to 40 %) took place during the RIP at a slightly lower level than in the original investigation. However, given the limited Ukrainian exports to the Community during the RIP the main focus of the analysis was concentrated on the likelihood of continuation or recurrence of dumping.

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

3.1. *Spare capacity*

(41) The three cooperating producers kept production stable during the period considered. Production capacity during the same period remained stable as well. They have a spare capacity of around 600 000 to 700 000 tonnes (8 to 10 % of Community consumption) to increase exports to the Community market in considerable volumes should measures be repealed. In addition, there is at least one other known Ukrainian producer of the product concerned who did not cooperate with the investigation. Although the spare capacity of this non-cooperating producer is unknown, it cannot be excluded that this is also considerable, as the three cooperating producers had, on average, a spare capacity of 30 %.

(42) Domestic sales of the three cooperating producers, during the period considered, represented on average 30 to 40 % of production capacity. It therefore appears difficult that the Ukrainian domestic market can absorb most of this spare production capacity and therefore any increase in production is likely to be exported.

(43) Therefore, in the absence of anti-dumping measures, a considerable part of that spare capacity could be exported to the Community.

3.2. *Relationship between Ukrainian sales prices on other markets and the sales price in the Community*

(44) An analysis of export sales of the cooperating Ukrainian producers to third countries showed, when compared at a DAF/FOB Ukrainian border level, that such sales have on average been made at prices 20 to 30 % lower than sales prices to the Community during the RIP. In addition, domestic sales have been made at prices 20 to 30 % lower than sales prices to the Community as well. From information relating to the RIP it would therefore appear that there would be an incentive for exports to third countries to be re-directed to the Community, should measures be repealed, in order to benefit from higher prices and better margins.

(45) It is, however, noted that Ukrainian import prices for natural gas have significantly increased since the RIP. As natural gas is the main costing element for producing AN, it cannot be excluded that Ukrainian producers will have to increase their export prices to third countries, thereby significantly reducing the price difference between sales to third countries and sales to the Community mentioned in recital (44) above. Preliminary evidence [1] points indeed to the narrowing of this gap.

[1] Ukrainian export statistics, 2005 and first semester 2006.

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

(46) The investigation has shown that two of the cooperating producers continued their dumping practices despite the measures in force. In addition, the re-direction of quantities currently sold to third countries to the Community cannot be excluded.

(47) Furthermore, the weighted average export prices of the cooperating exporting producers to third country markets are also considerably lower than the prevailing price level in the Community. Taken together with the significant spare capacity, there is therefore an incentive for Ukrainian exporting producers to shift AN to the Community market at likely dumped prices, should measures be repealed.

D. **DEFINITION OF THE COMMUNITY INDUSTRY**

(48) Within the Community, the like product is manufactured by 14 producers whose output constitutes the total Community production of the like product within the meaning of Article 4(1) of the basic Regulation.

(49) It should be noted that as compared to the original investigation, the 'Hydro Agri' companies have been renamed 'Yara'. 5 of the 14 companies became part of the Community industry due to the enlargement of the European Union in 2004.

(50) Out of the 14 Community producers, 10 companies cooperated with the investigation, all of them mentioned in the review request. The remaining four producers (other Community producers) made themselves known within the time limits and sent the information requested for the purpose of sampling. However, they did not offer any further cooperation. Accordingly, the following 10 producers agreed to cooperate:

— Achema AB (Lithuania),

— Zakłady Azotowe Anwil SA, (Poland),

— BASF AG (Germany),

— DSM Agro (the Netherlands),

— Fertiberia SA (Spain),

— Grande Paroisse SA (France),

— Nitrogénművek Rt (Hungary),

— Terra Nitrogen Limited (United Kingdom),

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

— Zakłady Azotowe w Tarnowie (Poland).

(51) As these 10 Community producers accounted for 70 % 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'.

(52) As indicated under recitals (11) and (14) above, a sample consisting of four companies was selected. All sampled Community producers cooperated and sent questionnaire replies within the deadlines. In addition, the remaining six cooperating producers duly provided certain general data for the injury analysis.

E. **SITUATION IN THE COMMUNITY MARKET**

1. **Consumption in the Community market**

(53) 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.

(54) Between 2002 and the RIP, Community consumption decreased slightly by 1 %. The 4 % increase recorded in 2003 settled down in 2004 indicating a stabilisation, whereas the further decrease (– 1 %) recorded in the RIP points to a slightly downward trend.

	2002	2003	2004	RIP
Total EC consumption in tonnes	7 757 697	8 099 827	7 775 470	7 641 817
Index (2002 = 100)	100	104	100	99

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

(55) The volumes, market shares and average prices of the imports from Ukraine developed as set out below. The following quantity and price trends are based on Eurostat.

	2002	2003	2004	RIP
Volume of imports (tonnes)	212 827	123 477	51 031	62 077
Market share	2,7 %	1,5 %	0,7 %	0,8 %
Prices of imports (EUR/tonne)	88	83	112	122
Index (2002 = 100)	100	94	127	139

(56) The volume of imports from Ukraine decreased consistently throughout the period considered. Their market share also dropped from 2,7 % in 2002 to 0,8 % in the RIP. The prices evolved positively from 88 to 122 EUR/tonne during the period considered. This evolution reflects the favourable market conditions described also in recital (73) below.

(57) For the purpose of calculating the level of price undercutting during the RIP, Community industry's ex-works prices to unrelated customers have been compared with the cif Community frontier import prices of cooperating exporting producers of the country concerned, duly adjusted in order to reflect a landed price. The comparison showed that imports from Ukraine were undercutting the prices of the Community industry by 10 to 15 %.

3. **Imports from other countries**

(58) 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 Russia (tonnes)	690 233	528 609	504 026	257 921
Market share	8,9 %	6,5 %	6,5 %	3,4 %
Prices of imports from Russia (EUR/tonne)	79	77	106	123
Volume of imports from Georgia (tonnes)	86 517	100 025	132 457	153 844
Market share	1,1 %	1,2 %	1,7 %	2,0 %
Prices of imports from Georgia (EUR/tonne)	103	113	137	164
Volume of imports from Romania (tonnes)	186 834	14 114	107 585	111 126
Market share	2,4 %	0,2 %	1,4 %	1,5 %
Prices of imports from Romania (EUR/tonne)	117	113	126	144
Volume of imports from Bulgaria (tonnes)	160 423	140 677	79 716	73 441
Market share	2,1 %	1,7 %	1,0 %	1,0 %
Prices of imports from Bulgaria (EUR/tonne)	133	139	157	176
Volume of imports from Egypt (tonnes)	63 368	133 427	16 508	46 249
Market share	0,8 %	1,6 %	0,2 %	0,6 %
Prices of imports from Egypt (EUR/tonne)	148	142	193	199
Volume of imports from all other countries (tonnes)	94 915	128 213	54 510	17 752
Market share	1,2 %	1,6 %	0,7 %	0,2 %
Prices of imports from all other countries (EUR/tonne)	124	124	141	169

(59) Firstly, it should be noted that all the countries above decreased their export volumes from 2002 to the RIP with the exception of Georgia, which increased moderately its Community market share from 1,1 % in 2002 to 2 % in the RIP. As for the export prices, all the above countries have exported to the Community at prices higher than the Community industry prices in the RIP and in some cases throughout the period considered, with the exception of Russia and Romania. In the case of imports from Russia, since April 2002, by Regulation (EC) No 658/2002 [1], they are subject to an anti-dumping duty of EUR 47,07 per tonne. In this respect, it should be noted that the import prices were consistently lower than those from Ukraine, throughout the period considered with the exception of the RIP. As to the Romanian prices, they were lower than the Community industry's prices, but the export volumes decreased from 187 000 tonnes in 2002 to 111 000 tonnes in the RIP, representing a decrease from a low market share of 2,4 % in 2002 to 1,5 % in the RIP.

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

(60) 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.

[1] OJ L 102, 18.4.2002, p. 1. Regulation as amended by Regulation (EC) No 945/2005.

4.1. *Preliminary remarks*

(61) Three of the cooperating Community industry producers were found to use the like product for further processing to blended or synthetic fertiliser products which are further downstream nitrogenous fertilisers containing, in addition to the nitrogen, water-soluble phosphorus, and/or water-soluble potassium, which are the other primary fertiliser nutrients. These products, with ammonium nitrate content less than 80 % by weight, do not compete on the market with the like product.

(62) Such internal captive transfers of AN production do not enter the open market and thus are not in direct competition with imports of the product concerned. It was therefore examined whether and to what extent the subsequent use of the Community industry's production of the like product had to be taken into account in the analysis. As the investigation showed that the captive use represents an insignificant fraction of the Community industry's production, i.e. up to 2 %, it was not considered necessary to distinguish the free and the captive market. For the sake of clarity and transparency, however, the volumes of AN produced by the Community industry and used as captive transfers are mentioned in recital (64) below.

(63) Where recourse is made to sampling, in accordance with established practice, certain injury indicators (production, production capacity, stocks, sales, market share, growth and employment) are analysed for the Community industry as a whole (C.I. in the enclosed tables), 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, ability to raise capital are examined on the basis of information collected at the level of the sampled Community producers (S.P. in the enclosed tables).

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

(a) Production

(64) The Community industry's production increased by 7 % between 2002 and the RIP, i.e. from a level of around 5,1 million tonnes in 2002 to a level of around 5,4 million tonnes in the RIP. As for the production used for captive transfers, it remained practically stable and very low throughout the period considered, showing thus that it cannot affect the injury picture of the Community industry.

	2002	2003	2004	RIP
C.I. production (tonnes)	5 075 456	5 424 732	5 358 283	5 446 307
Index (2002 = 100)	100	107	106	107
C.I. production used for captive transfers	83 506	83 911	93 187	107 461
As % of total production	1,6 %	1,5 %	1,7 %	2,0 %

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

(b) Capacity and capacity utilisation rates

(65) 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 52 % in 2002 to a level of 56 % 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 and is therefore less meaningful as an injury indicator.

	2002	2003	2004	RIP
C.I. Production capacity (tonnes)	9 813 156	9 843 266	9 681 968	9 718 866
C.I. Capacity utilisation	52 %	55 %	55 %	56 %

(c) Stocks

(66) The level of closing stocks of the Community industry decreased by 10 percentage points from 2002 to the RIP. A sharp decrease registered in 2003 and 2004 was due to an increase in sales, in particular the exports of the Community industry (see recital below), rather than in production volumes.

	2002	2003	2004	RIP
C.I. Closing stocks (tonnes)	312 832	216 857	163 824	282 942
Index (2002 = 100)	100	69	52	90

(d) Sales volume

(67) Sales by the Community industry on the Community market increased by 13 % between 2002 and the RIP. This development has to be seen against the background of a slightly shrinking consumption on the Community market.

	2002	2003	2004	RIP
C.I. EC sales volume (tonnes)	4 499 898	5 045 582	4 975 864	5 074 188
Index (2002 = 100)	100	112	111	113
S.P. sales volume to third countries (tonnes)	420 588	528 437	522 349	373 106
Index (2002 = 100)	100	126	124	89

(e) Market share

(68) The market share held by the Community industry increased between 2002 and the RIP. Specifically, the Community industry gained more than 8 percentage points of market share during the period considered.

	2002	2003	2004	RIP
Market share of Community industry	58,0 %	62,3 %	64,0 %	66,4 %
Index (2002 = 100)	100	107	110	114

(f) Growth

(69) The Community industry gained market share in a slightly shrinking market over the period considered.

(g) Employment

(70) The level of employment of the Community industry decreased by 5 % between 2002 and the RIP, while production increased, thus reflecting the concern of the industry to continuously increase its productivity and competitiveness.

	2002	2003	2004	RIP
C.I. Employment product concerned	1 653	1 613	1 593	1 572
Index (2002 = 100)	100	98	96	95

(h) Productivity

(71) The output per person employed by the Community industry per year increased substantially between 2002 and the RIP, thus showing the combined positive impact of reduced employment and increase in production of the Community industry.

	2002	2003	2004	RIP
C.I. Productivity (tonnes per employee)	3 071	3 362	3 364	3 464
Index (2002 = 100)	100	109	110	113

(i) Magnitude of dumping margin

(72) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the currently small volume of imports from Ukraine, this impact is considered not to be significant and the indicator not meaningful.

4.3. *Data relating to the sampled Community producers*

(a) Sales prices and factors affecting domestic prices

(73) The sampled Community industry producers' average net sales price increased substantially in 2004 and the RIP reflecting the prevailing favourable international market conditions of AN during the same period.

	2002	2003	2004	RIP
S.P. Unit price EC market (EUR/tonne)	132	133	146	167
Index (2002 = 100)	100	101	111	127

(b) Wages

(74) Between 2002 and the RIP, the average wage per employee increased by 9 %, as the table below shows. In the light of the inflation rate and the overall reduced employment, this increase of wages is considered to be moderate.

	2002	2003	2004	RIP
S.P. Annual labour cost per employee (000 EUR)	46,5	46,8	46,7	50,5
Index (2002 = 100)	100	101	100	109

(c) Investments

(75) Annual investments in the like product made by the four sampled producers developed positively during the period considered, i.e. increased by 69 %, although they showed some fluctuations. These investments related mainly to modernisation of machinery. This shows the efforts of the Community industry to continuously improve its productivity and competitiveness. The results are apparent in the evolution of productivity which increased substantially (see recital (71) above) during the same period.

	2002	2003	2004	RIP
S.P. Net investments (000 EUR)	21 079	16 751	22 287	35 546
Index (2002 = 100)	100	79	106	169

(d) Profitability and return on investments

(76) Profitability of the sampled producers shows a gradual improvement notably since 2003 and reached the level of 8,2 % during the RIP. In this respect, it is noted that in the original investigation, a profit margin of 8 % that may be reached in the absence of injurious dumping had been established. The return on investments (ROI), expressed as the profit in per cent of the net book value of investments, broadly followed the profitability trend over the whole period considered.

	2002	2003	2004	RIP
S.P. Profitability of EC sales to unrelated customers (% of net sales)	3,9 %	5,5 %	7,6 %	8,2 %
Index (2002 = 100)	100	139	194	209
S.P. ROI (profit in % of net book value of investment)	10,1 %	14,0 %	20,0 %	25,5 %
Index (2002 = 100)	100	139	197	252

(e) Cash flow and ability to raise capital

(77) Cash flow has increased by 13 percentage points 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)	59 631	61 446	69 848	67 216
Index (2002 = 100)	100	103	117	113

(78) 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.

5. **Conclusion**

(79) Between 2002 and the RIP, all injury indicators developed positively: production volume of the Community industry increased, unit sales prices and sales volumes of the Community industry increased, and profitability improved substantially and in line with the prices. Return on investment and cash-flow evolved positively as well. Wages developed moderately and the Community industry continued to invest.

(80) Moreover, the Community market share increased by 9 % in a slightly shrinking market. Productivity also increased substantially reflecting the positive evolution of production and the efforts of the Community industry to improve it through investments.

(81) 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 AN from the country concerned in 2001. The measures had therefore a clear positive impact on the economic situation of the Community industry.

(82) It is therefore concluded that the situation of the Community industry has improved gradually during the period considered, as compared to the period preceding the imposition of measures.

F. **LIKELIHOOD OF RECURRENCE OF INJURY**

1. **General**

(83) Since there is no continuation of material injury caused by imports from the country concerned, the analysis focused on the likelihood of recurrence of injury. In this respect, two main parameters were analysed: (i) possible export volumes and prices of the country concerned and (ii) the effect of those projected volumes and prices from the country concerned on the Community industry.

2. **Possible export volumes and prices of the country concerned**

(84) As it is shown in recital (41), there is a known spare capacity of around 600 000 to 700 000 tonnes of the cooperating Ukrainian producers, representing 8 to 10 % of the Community market. This surplus capacity indicates that Ukrainian producers have the possibility to increase their current production and thus also their exports of AN.

(85) Moreover, given the relatively small domestic market, Ukrainian producers are heavily dependent on exports to third countries. As demonstrated in the table below, Ukrainian exports to third countries in 2005 were about 847 000 tonnes in total, representing about 11 % of the Community market.

Ukrainian exports to third countries:		2004	2005
Turkey	Volume in tonnes	295 436	292 943
	Price in EUR/tonne (*)	98	98
Egypt	Volume in tonnes	81 522	183 248
	Price in EUR/tonne (*)	95	97
Morocco	Volume in tonnes	92 541	62 879
	Price in EUR/tonne (*)	96	94
India	Volume in tonnes	42 456	48 256
	Price in EUR/tonne (*)	77	106
Syria	Volume in tonnes	50 851	41 143
	Price in EUR/tonne (*)	100	110
Brazil	Volume in tonnes	8 000	38 870
	Price in EUR/tonne (*)	74	91
Malaysia	Volume in tonnes	—	35 913
	Price in EUR/tonne (*)		101
Argentina	Volume in tonnes	28 790	28 815
	Price in EUR/tonne (*)	99	97
Other countries	Volume in tonnes	140 225	114 783
	Price in EUR/tonne (*)	90	106
Total exports to third countries	Volume in tonnes	739 821	846 849
	Price in EUR/tonne (*)	95	99

Source: Ukrainian statistics.
(*) The unit price is based on the customs value of the product at the Ukrainian border. This value can be considered comparable to the value of imports into the Community originating in Ukraine based on Eurostat.

(86) As can be seen from the table, Ukraine increased its exported volume of AN to third countries from 2004 to 2005. These exports were made at prices substantially lower than the exports to the Community.

(87) In the above context, the Community market would appear to be attractive for the Ukrainian exporting producers in terms of prices as compared to all other export markets. On this basis, it is reasonably expected that a considerable part of the volumes exported to third countries would be very likely directed toward the Community market, should the measures be allowed to lapse, despite the early indications of the narrowing of the gap of the price difference between sales to third countries and sales to the Community mentioned in recital (45) above. The relative proximity of the Community market, as compared to other export markets, would also render the Community market more attractive and would therefore lead to the redirection of current exports by Ukrainian producers to third countries.

(88) Given the currently weak market position of Ukrainian products in the EC, the Ukrainian exporters would however need to regain lost market share or broaden their customer base and are likely to do so at dumped prices as established during the RIP.

(89) The applicant argued that the Community industry's profit was actually very poor over the period considered and that only during the RIP it reached the rate of 8 %. It further argued that a capital intensive industry such as the fertilizers industry could not survive over the long-term, i.e. maintain and replace capital and all operations on such profit rate. In this respect, it should be noted that the non-injurious profit rate of 8 %, established in the original investigation was considered to be a normal profit that this kind of industry should expect to reach in the absence of injurious dumping. However, also during that original investigation, it was established that due to injurious dumping from, *inter alia*, the Ukraine, profitability had deteriorated to – 12,4 %. Therefore, should measures be repealed, there is a serious risk that profitability be reduced to a percentage considerably below the non-injurious rate).

(90) It is to be noted that around 80 % of total Ukrainian exports to the Community market during the RIP were made under a price undertaking. Nevertheless, the prices were 20 to 25 % above the minimum import price of this undertaking. It should, however, be noted that the undertaking was subject to a quantitative ceiling, and that therefore it was not possible to draw a general conclusion as to what would have been the price behaviour of the exporters in the absence of such a quantitative ceiling.

(91) On the basis of the above, it would therefore be likely that significant volumes of AN produced in Ukraine would be redirected to the Community market at dumped prices which substantially undercut Community industry's prices, if measures are allowed to lapse.

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

(92) In view of the above established likelihood of significant increase of export volumes from Ukraine into the Community market at dumped and undercutting prices, the Community industry would have to significantly decrease its sales prices to maintain its customers. This is particularly true as AN is a volatile commodity for which prices can be significantly affected by an import volume at dumped prices undercutting the Community industry's prices. Therefore profits would strongly decrease, as the current improvement of the Community industry's performance is due to sales prices reflecting mainly the favourable market conditions prevailing in particular during 2004 and the RIP.

(93) With regard to the favourable market conditions during the last two years of the period considered, it should be noted that they played an important role in keeping the prices at a high level, in addition to the applicable anti-dumping measures. Indeed, during that period, a tight worldwide supply-and-demand balance resulted in high prices for all nitrogen fertilisers. AN is, like the other nitrogen fertilisers, a commodity whose pricing is influenced by numerous factors ranging 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 of 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 country concerned and the likelihood that part of its exports to third countries during the RIP would be redirected to the Community, should the measures lapse. Given that the prices practiced by the Ukrainians were significantly undercutting the prices of the Community industry, the likely increase in import volumes from Ukraine will force the Community industry either to significantly lower its prices, and thereby its profits, or to lose significant market share and thus revenue, or both. The successful restructuring process of the Community industry could probably only partially counterbalance such a likely price depression and the whole recovery process would be put in danger. Therefore, a deterioration of the Community industry's overall performance is likely to result from the repeal of the measures.

4. **Conclusion on likelihood of recurrence of injury**

(94) The above leads to the conclusion that should measures lapse, exports from the country concerned would very likely occur in significant volumes and at dumped prices that would undercut the Community industry's prices. This would in all likelihood have the effect of introducing a price-depressive trend on the market, with an expected negative impact on the economic situation of the 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.

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

G. COMMUNITY INTEREST

1. Introduction

(95) 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 various interests involved.

(96) It should be recalled that, in the original investigation, the adoption of measures was considered not to be contrary to 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.

(97) 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

(98) 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 2001. In particular, the Community industry improved its profit situation between 2002 and the RIP and restructured itself successfully.

(99) It can thus reasonably be expected that the Community industry will continue to benefit from the measures currently imposed and further recover by maintaining and stabilising its profitability. Should the measures not be maintained, it is likely that increased imports at dumped prices from the country concerned will occur, thereby causing injury to the Community industry by exerting a downward pressure on the sales prices which will endanger its currently positive financial situation.

3. Interest of importers

(100) As mentioned in recital (11) above, only one importer indicated its willingness to be included in the sample and provided the basic information required in the sampling form. However, the said importer did not have any import activity during the RIP.

(101) 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 imports would continue to take place albeit at non-injurious prices and that as a rule, importers do not only deal in AN but also, to a significant extent, in other fertilisers. The downward trend in imports from the country concerned during the period considered leads to the conclusion that some importers may indeed have had negative consequences from the imposition of measures, as indicated in recital (52) of Commission Regulation (EC) No 1629/2000 [1]. However, in the absence of cooperation of importers and thus of any conclusive evidence allowing to assess any significant negative consequences, it was concluded that the imposition of measures appears to have had an overall limited impact on the majority of importers/traders.

(102) There is no reliable information available indicating that the maintenance of the measures will have a significant negative effect on importers or traders.

4. Interest of users

(103) Users of AN are farmers in the Community. In the original investigation, it was concluded that given the small incidence of the cost of AN 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) AN represents a very small part of total production costs for the 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 farmers.

5. Conclusion on Community interest

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

H. ANTI-DUMPING MEASURES

(105) 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.

[1] OJ L 187, 26.7.2000, p. 12.

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

(107) As indicated in recital (45), the Ukrainian import prices for natural gas have significantly increased since the RIP and they are likely to progressively converge with international prices in the coming years. Moreover, as explained in recital (32), the dumping findings were based on a normal value determined on the basis of data obtained from a producer in a market economy third country. Subsequent to the lodging of the request for the expiry review, Ukraine obtained market economy status. Given this, and that natural gas is the main cost element for producing AN, it is possible that should dumping be revised at a later stage on the basis of normal value data of the Ukrainian exporters, the findings would differ from those established in the current review. Likewise, the potentially injurious effects of that revised dumping would also be affected by the impact on export prices of the production costs increases caused by the evolution of domestic gas prices. Therefore it is considered prudent to limit the maintenance of the measures to two years, without prejudice to the other provisions of Article 11 of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91, and originating in Ukraine.

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

Product description	CN code	TARIC code	Amount of duty (EUR/tonne)
Ammonium nitrate other than in aqueous solutions	3102 30 90	—	33,25
Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90		33,25
Double salts and mixtures of ammonium sulphate and ammonium nitrate — solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	33,25
Double salts and mixtures of calcium nitrate and ammonium nitrate — solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, with no phosphorus and no potassium content	3105 10 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and/or a potassium content evaluated as K_2O of less than 3 % by weight	3105 10 00	20	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and/or a potassium content evaluated as K_2O of 3 % by weight or more but less than 6 % by weight	3105 10 00	30	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and/or a potassium content evaluated as K_2O of 6 % by weight or more but less than 9 % by weight	3105 10 00	40	30,26

Product description	CN code	TARIC code	Amount of duty (EUR/tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and/or a potassium content evaluated as K_2O of 9 % by weight or more but not exceeding 12 % by weight	3105 10 00	50	29,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and a potassium content evaluated as K_2O of less than 3 % by weight	3105 20 10	30	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and a potassium content evaluated as K_2O of 3 % by weight or more but less than 6 % by weight	3105 20 10	40	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and a potassium content evaluated as K_2O of 6 % by weight or more but less than 9 % by weight	3105 20 10	50	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and a potassium content evaluated as K_2O of 9 % by weight or more but not exceeding 12 % by weight	3105 20 10	60	29,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of less than 3 % by weight	3105 51 00	10	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 3 % by weight or more but less than 6 % by weight	3105 51 00	20	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 6 % by weight or more but less than 9 % by weight	3105 51 00	30	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 9 % by weight or more but not exceeding 10,40 % by weight	3105 51 00	40	29,79
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of less than 3 % by weight	3105 59 00	10	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 3 % by weight or more but less than 6 % by weight	3105 59 00	20	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 6 % by weight or more but less than 9 % by weight	3105 59 00	30	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 9 % by weight or more but not exceeding 10,40 % by weight	3105 59 00	40	29,79
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K_2O of less than 3 % by weight	3105 90 91	30	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K_2O of 3 % by weight or more but less than 6 % by weight	3105 90 91	40	31,25

Product description	CN code	TARIC code	Amount of duty (EUR/tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K_2O of 6 % by weight or more but less than 9 % by weight	3105 90 91	50	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K_2O of 9 % by weight or more but not exceeding 12 % by weight	3105 90 91	60	29,26

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 [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.

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

Article 2

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

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

Done at Luxembourg, 19 April 2007.

For the Council
The President
B. ZYPRIES

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