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COUNCIL REGULATION (EC) No 661/2008

of 8 July 2008

imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96

(OJ L 185, 12.7.2008, p. 1)

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imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) 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 Articles 11(2) and 11(3) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) By Regulation (EC) No 2022/95 [2], the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia falling within CN codes 3102 30 90 and 3102 40 90. Pursuant to a further investigation, which established that the duty was being absorbed, the measures were amended by Regulation (EC) No 663/98 [3]. Following a request for an expiry and an interim review pursuant to Articles 11(2) and 11(3) of the basic Regulation, the Council, by Regulation (EC) No 658/2002 [4], imposed a definitive anti-dumping duty of EUR 47,07 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Finally, a product scope interim review was carried out and, by Council Regulation (EC) No 945/2005 [5], a definitive anti-dumping duty ranging between EUR 41,42 per tonne and EUR 47,07 per tonne was imposed on imports of solid fertilisers originating in Russia with an ammonium nitrate content exceeding 80 % by weight ('AN'), 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.

(2) On 19 April 2007, the Council imposed, by Regulation (EC) No 442/2007 [6] definitive anti-dumping measures on imports of AN originating in Ukraine.

2. **Request for reviews**

2.1. *Partial interim review of the anti-dumping measures in force on imports of AN originating in Russia and produced by Open Joint Stock Company (OJSC) Mineral and Chemical Company 'EuroChem', member of the EuroChem group of companies*

(3) On 30 August 2005, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regu-

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[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 198, 23.8.1995, p. 1.
[3] OJ L 93, 26.3.1998, p. 1.
[4] OJ L 102, 18.4.2002, p. 1.
[5] OJ L 160, 23.6.2005, p. 1.
[6] OJ L 106, 24.4.2007, p. 1.

▼B

lation ('interim review'). The request, limited in scope to dumping, was lodged by Open Joint Stock Company (OJSC) Mineral and Chemical Company 'EuroChem' ('EuroChem'), an exporting producer of AN in Russia.

(4) EuroChem alleged and provided sufficient *prima facie* evidence that circumstances had changed and, in particular, that a comparison of normal value based on its own data with export prices of the product concerned when sold for export to the Community would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of measures at the existing level, which was based on the injury margin previously established, would no longer be necessary to offset dumping.

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the interim review, the Commission initiated this review on 30 November 2005 ([1]).

2.2. *Expiry review of the anti-dumping measures in force on imports of AN originating in Russia*

(6) Following the publication of a notice of impending expiry ([2]), the Commission received a request on 17 January 2007 for an expiry review.

(7) The 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 AN.

(8) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry. One party claimed that the Commission should have opened ex officio a parallel interim review concerning both dumping and injury in order to take into account changes in circumstances caused by the EU enlargement that took place in 2004 and 2007. The Commission, by several notices ([3]) that were published in the *Official Journal of the European Union*, has invited interested parties to request the initiation of interim reviews if they submit evidence that the measures would have been significantly different if they were based on information including the new Member States. No such requests and substantiated evidence have been submitted to the Commission. In this regard, it should be noted that enlargement per se, in the absence of such evidence, is not a sufficient basis for a review to be initiated. Therefore, this claim had to be rejected.

(9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the expiry review, the Commission initiated this review on 14 April 2007 ([4]).

3. **Parties concerned by the investigations**

(10) The interim review investigation is limited in scope to the examination of dumping as far as EuroChem is concerned. The Commission officially advised the exporting producer, the representatives of the exporting country and the Community producers of the initiation of the partial interim review.

(11) With regard to the expiry review investigation, the Commission officially advised the exporting producers, the representatives of

([1]) OJ C 300, 30.11.2005, p. 8.
([2]) OJ C 167, 19.7.2006, p. 17.
([3]) OJ C 91, 15.4.2004, p. 2 and C 297, 7.12.2006, p. 12.
([4]) OJ C 81, 14.4.2007, p. 2.

▼B

the exporting country, importers, Community producers, users and the applicant (EFMA) of the initiation of the expiry review.

3.1. *Sampling of Community producers*

(12) In view of the large number of Community producers (23) and of importers in the Community, it was considered appropriate in the expiry review, 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 Community producers and importers 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.

(13) After examination of the information submitted, and given that 14 Community producers indicated their willingness to cooperate, it was decided that sampling was necessary with regard to Community producers.

3.2. *Sampling of Community importers*

(14) Only one importer responded to the notice of initiation and initially expressed its willingness to cooperate. However, this importer eventually did not provide any of the requested information as it stopped importing ammonium nitrate from Russia in 2005.

4. **Questionnaires and verification**

(15) For the interim review a questionnaire was sent to EuroChem, which cooperated by replying to the questionnaire.

(16) For the expiry review questionnaires were sent to all known exporting producers in the countries concerned, related importers, the Community producers in the sample, users and the applicant.

(17) As for the expiry review replies to the questionnaire were received from:

(18) Three Russian exporting producers/distributors. These companies were: EuroChem, Acron (‘Acron’), and JSC Minudiobreniya (‘Minudiobreniya’).

(19) Four sampled Community producers:

— Grande Paroisse Société Anonyme (Paris, France),

— Terra Nitrogen Limited (Stockton-on-Tees, UK),

— Yara (Belgium, Germany, France, Italy, the Netherlands and the UK),

— Zakłady Azotowe Puławy (Poland).

(20) From the 55 addressed potential importers of ammonium nitrate into the Community, only three companies replied indicating they had no imports of the product concerned during the period considered.

(21) Written comments were received from the Committee of Professional Agricultural Organisations in the EU (COPA)/General Confederation of Agricultural Cooperatives in the EU (Cogeca), from the National Farmers’ Union of England and Wales and from the Federation of Swedish farmers.

(22) In both investigations 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 respective notices of initiation. All interested parties who so requested and showed that

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there were particular reasons why they should be heard, were granted a hearing.

(23) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) Exporting producers in Russia

EuroChem and its two related companies ([1]):

— OJSC Azot ('NAK Azot'), Novomoskovsk, Russia, and

— OJSC Nevinnomyssky Azot ('Nevinka Azot'), Nevinnomyssk, Russia.

Acron and its three related companies:

— Open Joint Stock Company (OJSC) Dorogobuzh,

— JSC Kubanagranova,

— ZAO Rostagranova.

Minudiobreniya

(b) Sampled Community producers

— Grande Paroisse Société Anonyme (Paris, France),

— Terra Nitrogen Limited (Stockton-on-Tees, UK),

— Yara Société Anonyme (offices visited in Brussels, Belgium; in Paris, France and in Sluiskil, the Netherlands),

— Zakłady Azotowe Puławy (Poland).

(c) Related importer

EuroChem GmbH — Zug (Switzerland)

(d) Unrelated importers in the Community

No verification visits were carried out, because no importer of AN from the country concerned replied to the questionnaire.

5. **Relevant periods covered by the review investigations**

(24) The investigation period for the partial interim review pursuant to Article 11(3) of the basic Regulation concerning imports from EuroChem covered the period from 1 July 2004 to 30 June 2005 ('interim review investigation period''IRIP').

(25) The investigation period for the expiry review covered the period from 1 April 2006 to 31 March 2007 ('expiry review investigation period' or 'ERIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2003 up to the end of the ERIP ('period considered').

6. **Disclosure and opportunity to comment**

(26) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the anti-dumping measures imposed on the company EuroChem and to maintain a definitive anti-dumping duty on AN originating in Russia. They were also granted a period within which they could make representations subsequent to the disclosures. Their comments were considered and taken into account where appropriate.

([1]) Only in relation to the interim review.

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B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(27) The product concerned by these reviews is the same as the product defined in Regulation (EC) No 945/2005, i.e. 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 Russia.

2. Like product

(28) As in previous investigations, it was found that AN produced and sold on the domestic market in Russia and AN exported to the Community from Russia have the same basic physical and technical characteristics and uses. Therefore, they are like products for the purposes of the present investigations within the meaning of Article 1(4) of the basic Regulation.

(29) The ammonium nitrate produced by the Community industry is a like-product as regards physical and technical characteristics to the ammonium nitrate exported to the Community by Russia.

C. PARTIAL INTERIM REVIEW: DUMPING

1. General

(30) Since all products sold by EuroChem to the Community during the IRIP were exclusively produced by one related producer, NAK Azot, the analysis, as regards normal value and export price, has been carried out in respect of this producer only. The resulting dumping margin and duty, if any, to be applied to imports manufactured by NAK Azot should also be applied to the related company, Nevinka Azot.

2. Normal value

(31) Only one product type was exported to the Community, therefore normal value was established in relation to this product type. It was examined whether sufficient sales had been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. The domestic selling prices of each transaction were compared to the total cost of production.

(32) In this respect, 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. For the purpose of carrying out the ordinary course of trade test, it had also been examined whether the costs associated with the production and sale of the product under consideration were reasonably reflected in the records of the parties concerned.

(33) The investigation showed no indication that the electricity would not be reasonably reflected in the records. In this context, it is, *inter alia*, noted that electricity prices paid by EuroChem during the IRIP 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.

(34) 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 EuroChem was around one-fifth of the export price of natural gas from Russia. Moreover, all available data indicates that domestic gas prices in Russia were regulated prices, which are far below market prices paid for natural gas, for example in the USA,

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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. These gas markets can therefore considered representative within the meaning of Article 2(5) of the basic Regulation. Information available also suggests that domestic sales prices of Russian gas do not even cover costs of the gas supplier, Gazprom.

(35) In view of the above, it was considered that the gas prices paid by NAK Azot during the investigation period could not be used for the purposes of determining the cost of production of the product concerned pursuant to the first sentence of Article 2(5) of the basic Regulation. Therefore, as provided for in Article 2(5) of the basic Regulation, the costs, i.e. in this case, for gas supplies, of NAK Azot had to be adjusted to reflect the costs associated with the production and sale of the like product, during the IRIP. Given that the current review was limited to an examination of the level of dumping by EuroChem, an adjustment on the basis of undistorted prices paid by other producers or exporters in Russia could not be made as no such data was available. In these circumstances, it was considered appropriate to base the adjustment, in accordance with Article 2(5) of the basic Regulation, on information from other representative markets. In this case, the adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border, net of transport costs ('the adjusted Waidhaus price').

(36) The production cost provided by NAK Azot was therefore recalculated in order to take account of the adjusted gas prices. On the basis of this recalculated cost of production, all sales of the domestic product which were directly comparable with the sole product type exported by the company were found to be non-profitable, i.e. not made in the ordinary course of trade. Therefore, normal value had to be constructed. This was done on the basis of the manufacturing costs of the product type exported to the Community, after the adjustment for the gas cost mentioned above, plus a reasonable amount for selling, general and administrative costs ('SG&A costs') and for profits, in accordance with Article 2(3) and Article 2(6) of the basic Regulation.

(37) SG&A costs and profit could not be established on the basis of the chapeau of Article 2(6) of the basic Regulation because NAK Azot 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 is only one other producer subject to the investigation (Nevinka Azot). Article 2(6)(b) was not applicable either, since the manufacturing cost of NAK Azot 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 above. Therefore, SG&A costs and profit were established pursuant to Article 2(6)(c) of the basic Regulation.

(38) In accordance with Article 2(6)(c) of the basic Regulation, the SG&A costs were based on a reasonable method. The North American market showed a significant volume of domestic sales and a considerable level of competition from both domestic and foreign companies. In this respect, consideration was given to publicly available information relating to major companies operating in the fertilisers' business sector. It was found that the corresponding data from North American (USA and Canadian) 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. Therefore, SG&A costs

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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 nitrogen fertilisers' sector, with regard to their domestic 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 thereby representative of those normally incurred by companies operating successfully in that business segment.

(39) The percentage for SG&A costs was 6,9 %. The calculated average profit margin was 9,1 %. 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.

3. **Export price**

(40) It was found that EuroChem's sales of the product concerned to the Community during the IRIP were made on the basis of an agent agreement through two related traders, one located in Switzerland, EuroChem Trading, and the other one in the British Virgin Islands, Cumberland. The latter ceased to operate at the beginning of 2005.

(41) The export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable for the product when sold for export from the exporting country to the Community.

4. **Comparison**

(42) The normal value and export price were compared on an ex-works basis, at the level of NAK Azot. 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, packing, credit and commissions, where applicable and supported by verified evidence. In this respect, since export sales are made via the related traders mentioned above, and as these related traders were found to have functions similar to those of an agent working on a commission basis, an adjustment for each of these traders was made to the export price, pursuant to Article 2(10)(i) of the basic Regulation. In the absence of cooperation from Community importers, this adjustment was made at the level of 1,5 %, since this level reflected commissions paid to independent agents involved in the trade of the product concerned in the original investigation.

5. **Dumping margin**

(43) The 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) of the basic Regulation.

(44) The dumping margin, expressed as a percentage of the CIF Community frontier price, duty unpaid, is 28,3 %.

6. **Lasting nature of changed circumstances**

(45) In accordance with Article 11(3) of the basic Regulation, an analysis was made as to whether the change in circumstances with regard to dumping could reasonably be said to be of a lasting nature.

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(46) In this regard, it should be noted that normal value in the original investigation was established on the basis of profitable sales prices in the USA domestic market, since Russia was not a market economy country at that time. In the context of the current review investigation, Russia is considered a market economy country, and the normal value has therefore been established on the basis of EuroChem's cost of production, adjusted where necessary. No indications could be found that the normal value established during the present review could not be considered to be of a lasting nature.

(47) By comparing the normal values and export prices of the previous and the current investigation, it has been established that, account being taken of comparable product types, normal value has considerably increased, but the average export price has increased even more, leading to a decreased level of dumping. As for the export prices to other markets, they have been found to be generally in line with export prices to the Community. No evidence was found that export sales would not continue to be made at dumped prices, however at a lower level than in the original investigation.

(48) On this basis, it is concluded that the changed circumstances with respect to the original investigation regarding dumping (now based on the comparison of the own normal value and export prices of EuroChem) could reasonably be considered to be of a lasting nature.

(49) According to Article 9(4) of the basic Regulation, the amount of the anti-dumping duty should not exceed the margin of dumping established, but it should be less than that margin if such lesser duty would be adequate to remove the injury of the Community industry. As the existing duties for Russia had been calculated on the basis of the injury margin, and as the new dumping margin established during this investigation is lower than the injury margin previously calculated, the duty should be adjusted to the dumping margin found in this investigation, namely 28,3 %.

7. **Conclusion**

(50) In view of the conclusions reached with regard to dumping and the lasting nature of the changed circumstances, the individual anti-dumping duty on imports of the product concerned in respect of EuroChem should be amended in order to reflect the new dumping margin found.

(51) Since the dumping level found is lower than the injury margin established in the previous investigation, the duty rate should be set at the dumping level found.

(52) Since in the original investigation the duty was imposed in the form of a specific amount per tonne, it should have the same form in the current investigation. Thus, the duty is EUR 32,82/tonne. The duty should be applied, in accordance with Regulation (EC) No 945/2005, in proportion to the content of AN and of other marginal substances and nutrients, in the case of compounds of AN fertilisers with a nitrogen content exceeding 28 % by weight.

(53) Although this duty has been based on data from NAK Azot, as stated above, it will apply to all sales made by EuroChem, regardless of which related factory manufactured the product.

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D. EXPIRY REVIEW

D.1. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

(54) For reasons of consistency it has been, as a first step, examined whether dumping was currently taking place and whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

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

1.1. *Preliminary remark*

(55) As mentioned above, three exporting producers (EuroChem, Acron and Minudiobreniya) have cooperated in the investigation.

1.2. *Normal value*

(56) The Commission examined whether the domestic sales could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. To this end, the cost of production of the product produced and sold by the cooperating exporting producers on the domestic market was examined.

(57) Gas is a main raw material component in the manufacturing process of the product concerned and represents a significant proportion of the 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.

(58) It was established, on the basis of data published by internationally recognised sources specialised in energy markets that the prices paid by the Russian producers, based on governmental regulation, were abnormally low. By way of illustration, they amounted to around one-fourth of the export price of natural gas from Russia and were also significantly lower than the gas price paid by the Community producers.

(59) Since gas costs were not reasonably reflected in the cooperating producers' records, they had to be adjusted accordingly. In the absence of any sufficiently representative undistorted gas prices related to the Russian domestic market, it was considered appropriate to base the adjustment, in accordance with Article 2(5) of the basic Regulation, on information from other representative markets. In this case, the adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border, net of transport costs and adjusted to reflect local distribution costs ('the adjusted Waidhaus price'). Waidhaus being the main hub for Russian gas sales to the EU and is the largest market for Russian gas. Accordingly, it can be considered a representative market.

(60) In relation to the adjusted Waidhaus price, a number of arguments have been put forward by Russian exporters.

(61) First, it was claimed that any adjustment of their gas price paid on the domestic market would be unwarranted alleging that their accounting records fully reflected the costs associated with the activity of production and sales of the like product in the country of origin. To substantiate this claim, a study from an independent consultancy firm stating that the gas price paid by Russian exporters reflected full cost of production and sale of gas, as incurred by the gas provider, was provided. It should be noted that, as the study itself sets out, the costs of gas as well as the cost of the delivery of the gas to Russian producers of AN used for the comparison were estimated costs and thus not actual costs

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incurred during the ERIP. It is also unclear whether the costs thus established were full costs as established in accordance with the basic Regulation, i.e. including full costs of manufacturing and full SG&A costs linked to the production and sale of gas. Finally, it is also noted that the information available on the gas provider's costs could not be verified within the framework of this proceeding and information available does not suggest that domestic sales prices of Russian gas covered costs of the gas supplier, Gazprom, during the whole ERIP.

(62) In any case, it is considered that under Article 2(5) of the basic Regulation, the sole fact that the price of gas charged by the supplier to its clients is cost covering is as such not a criterion to establish whether the costs of production of the like product as booked in the company's accounts are reasonably reflecting the costs associated with the production and sale of the product under investigation. For the reasons set out above (publications of internationally recognised sources specialised in energy markets and comparison of gas prices in Russia with prices of exported Russian gas) this was found not to be the case. Second, the Russian producers of AN did not address the apparent significant difference between the price for gas paid on the Russian domestic market and the export price of natural gas from Russia on the one hand and the one paid by the Community producers on the other hand. They did also not address the fact that domestic prices for natural gas were regulated in Russia and could not be considered to reasonably reflect a price normally payable in undistorted markets. Therefore, even if the gas price paid by the AN producer covered the unit cost of production and sales of the gas incurred by its provider, these arguments are irrelevant since the market price of gas is not necessarily directly linked to costs of its production and sales and the price at which Russian companies were purchasing the gas during the ERIP continue to be state regulated and significantly below the price level in non-regulated markets as explained above (price of gas in Russia was during the ERIP around one-fourth of its export price). This claim therefore had to be rejected.

(63) It was further claimed that by making a gas adjustment, *de facto* a methodology to determine normal value was used which is not foreseen by the basic Regulation. Thus, by replacing domestic gas costs by costs based on the adjusted Waidhaus price, and due to the fact that these costs constitute major part of the total costs of the like product and therefore also of the constructed normal value, the normal value would be *de facto* determined by data from a third 'representative' market. In this regard, it was argued that for market economy countries, the basic Regulation foresees only the following methodologies to determine the normal value: (i) on the basis of the domestic price of the like product in the ordinary cause of trade, or alternatively, in case sales are not made in the ordinary course of trade, (ii) on the basis of the cost of production in the country of origin (plus a reasonable amount for SG&A costs and for profits), or (iii) representative export prices of the like product to an appropriate third country. The Russian exporters concluded that on this basis normal value should not be based on data from a third representative market.

(64) In this regard, it should first be noted that normal value was established in accordance with the methodologies outlined in Article 2(1) to (6) of the basic Regulation. However, in order to establish whether domestic sales were made in the ordinary course of trade by reason of price, i.e. whether they were profitable, it must first be established whether the costs of the AN producer were a reliable basis within the meaning of Article 2(5) of the basic Regulation. Only after costs have been reliably established, can it be determined which methodology to establish normal value should be used. It is therefore wrong to claim

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that by determining reliable costs in accordance with Article 2(5) of the basic Regulation a new methodology to determine normal value was introduced. The Russian producers' arguments in this respect therefore had to be rejected.

(65) Additionally it was claimed that, even in the case that an adjustment was to be made to the cost of natural gas on the domestic market, Waidhaus price for Russian natural gas was not a reliable basis for such an adjustment since that price is set according to long-term gas contracts under which the price formula is linked to oil product prices and thus unrelated to the costs of producing and delivering gas to EuroChem in Russia. It was further argued that Waidhaus price for Russian gas is not reliable because it is affected by excessively high and possibly non-competitive domestic pricing on gas in Germany, which is being investigated by German Antitrust Authorities.

(66) Firstly, it should be noted that one of the primary criteria for the choice of the basis on which to establish the gas prices was that it reasonably reflects a price normally payable in undistorted markets. It is undisputed that this condition is met with respect to the prices at Waidhaus. Furthermore, by far the greatest volume of gas from Russia is imported via the Waidhaus hub which represents therefore an appropriate basis for an adjustment. On this basis, Waidhaus was considered as a representative market and a reasonable basis for the determination of gas costs within the meaning of Article 2(5) of the basic Regulation. Secondly, it is on its own irrelevant whether the price is cost driven as long as it reasonably reflects a price normally payable in undistorted markets. As regards the price of gas imported at Waidhaus, there are no indications of state interference in price forming and this condition is thus met. Finally, as regards the claim about non-competitive domestic pricing on gas in Germany it should be noted that the Bundeskartellamt investigation is still ongoing and no conclusions were reached. Besides, this investigation concerns prices at which German main gas distributors sell the gas on the German domestic market and not the price at which they purchase the gas imported from Russia. In contrast to what was claimed, these two prices are not necessarily related since the economic interest of gas distributors and their customers is exactly the opposite. Thus, it can be presumed that the distributors aim to keep the resale price at the highest possible level whereby at the same time it is in their economic interest to keep the purchase price at the lowest possible level in order to maximise profit levels. The argument that the German incumbents do not have an incentive to negotiate low prices for Russian imported gas at Waidhaus is a mere presumption without any factual background. Consequently, these arguments were rejected.

(67) It was further claimed that if an adjustment were to be made to the cost of natural gas on the domestic market, such adjustment should be based on non-regulated gas prices available in Russia. Firstly, the fact that the Commission could have chosen a different basis does not render the choice of Waidhaus unreasonable. The primary criterion for the choice of the basis on which to establish the gas price is that it reasonably reflects a price normally payable in undistorted markets. It is undisputed that this condition is met with respect to the prices at Waidhaus. Secondly, the fact that the volume of gas sold at non-regulated prices in the domestic market was only minor during the ERIP (less than 2 %) and that such prices were significantly closer to the regulated domestic price than to the freely-determined export price strongly suggests that these non-regulated prices were distorted by the prevailing regulated prices. Therefore, the unregulated domestic prices could not be used.

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(68) Moreover, it was argued that domestic prices for natural gas in Russia regulated by the state are increasing constantly. Therefore, the price on the domestic market cannot be considered as uncompetitive or unreasonably low. In this context, it was indicated that the Russian Government has adopted a decree ([1]) establishing a state programme that will lead to multiple increases of gas prices in Russia to industrial users in the years up to 2011.

(69) This argument has no grounds since the correct standard for choosing a representative market is not whether prices are profitable as such or whether they are increasing but whether prices reasonably reflect a price normally payable in undistorted markets. This is not the case for prices regulated by the state, even if they are constantly rising. Therefore, these arguments were rejected.

(70) It was further proposed the use of Russian export price to the neighbouring markets as an alternative basis for the adjustment, however without providing any further information or evidence on such markets. It was considered that Russian export prices of gas to the Baltic States, where some price information was available, were not sufficiently representative, due to the relatively low export volumes to these countries. Furthermore, necessary data concerning transportation and distribution cost were not available and therefore, reliable prices to the Baltic States could in any case not be established. Therefore, these prices could not be used as a basis for the adjustment.

(71) Alternatively, it was argued that if the export price at Waidhaus was to be used, the Russian export duty payable for all exports should have been deducted from the Waidhaus price because it was not incurred domestically.

(72) Indeed the market price at Waidhaus, which was considered to be a representative market within the meaning of Article 2(5) of the basic Regulation, is the price after export taxes and not the price before these taxes. From the perspective of the buyer it is the price it has to pay at Waidhaus which is relevant, and in this regard it is irrelevant what percentage of that price constitutes an export tax and what percentage is paid to the gas supplier. The latter, on the other hand will always try to maximise its price and therefore charge the highest price its customers are willing to pay. Given that this price is always well above its costs of production, allowing the gas supplier to make huge profits, its price setting is not primarily influenced by the amount of the export tax but by what price its customers are willing to pay. It was therefore concluded that the price including the export tax, and not the price before that tax, is the undistorted market driven price. Consequently, the arguments in this regard were rejected.

(73) In this context, it was also claimed that the mark-up of the local distributor should not be added to the export price at Waidhaus claiming that profits of the distributors would already be included in the price at Waidhaus. In this regard, it was argued that the local distributors in Russia were fully owned subsidiaries of the gas supplier and therefore, addition of the profit of these distributors could constitute double counting. It was also claimed that natural comparative advantage of Russia should be taken into account. It was argued further that, since gas is largely available in Russia but not in the Community, domestic prices in Russia would be naturally lower than the price of the exported gas, which should have been taken into account when determining the adjustment to the gas prices paid on the domestic market. Moreover, it was claimed that one party has not used during the ERIP the local system of low pressure pipelines of local distributors to supply natural gas from the main high

([1]) Russian Government Regulation of 28 May 2007, No 333.

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pressure pipelines to its production sites. Therefore, gas price adjustments should not include regional transportation prices.

(74) It is first noted that the mark-up of local distributors do not only include the profit margin of these companies but also their costs between purchase and resale of the natural gas.

(75) Secondly, this argument could not be sufficiently verified anymore. This is due to the fact that the gas supplier in Russia and its affiliations were not subject to the present investigation and that therefore there was insufficient information of the organisation and its cost structure available. It is also noted that the situation in Russia in this regard due to, *inter alia*, the close links between the gas supplier and the Russian government is not sufficiently transparent to allow sufficient access to the necessary evidence.

(76) Moreover, Russian exporters were not able to submit any further information or evidence which showed whether and to what extend distribution costs were indeed included in the Waidhaus price. However, since domestic customers were purchasing the gas from local suppliers, it had to be assumed that they would have to pay local distribution costs, at least for sales services, which are not as such included in the unadjusted Waidhaus price.

(77) In this respect, it should be pointed out that, even if gas price adjustments did not include transportation costs, the impact on the calculation of the dumping margin would be substantial but the resulting dumping margin would still be significant and would not change the conclusions reached in the expiry review. Accordingly, this argument was rejected. However, if Russian producers supply sufficient verifiable evidence that would allow reducing the dumping margin, the Commission may consider opening interim review investigations in this regard.

(78) As far as the claimed comparative advantages are concerned regarding the availability of natural gas in Russia, it should be noted that the primary criterion for the choice of Waidhaus prices as a basis on which to establish the gas prices is that they reasonably reflect a price normally payable in undistorted markets. The market conditions prevailing in the domestic market are irrelevant in this context. This argument had therefore to be rejected.

(79) SG&A costs and profit could not be established on the basis of the chapeau of Article 2(6) or Article 2(6)(a) of the basic Regulation because none of the cooperating exporters have representative domestic sales of the product concerned in the ordinary course of trade. Article 2(6)(b) was not applicable either, since the manufacturing cost of the exporting producers 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 recitals (58) and (59) above. Therefore, SG&A costs and profit were established pursuant to Article 2(6)(c) of the basic Regulation. In accordance with Article 2(6)(c) of the basic Regulation, the SG&A costs were based on a reasonable method. The North American market showed a significant volume of domestic sales and a considerable level of competition from both domestic and foreign companies. In this respect, consideration was given to publicly available information relating to major companies operating in the fertilisers' business sector. It was found that the corresponding data from North American (USA and Canadian) 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. 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,

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which were found to be amongst the largest companies in the nitrogen fertilisers' sector, with regard to their domestic sales of the same general category of products (nitrogen fertilisers). These three producers were considered to be representative of the nitrogen fertilisers' business and their SG&A costs and profit thereby representative of those normally incurred by companies operating successfully in that business segment. It should be noted that the amount of SG&A costs and profit so established did not exceed the SG&A costs incurred and the profit realised by the Russian cooperating companies.

1.3. *Export price*

(80) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(81) In cases where sales were made via a related importer, the export price was constructed on the basis of the resale prices of that related importer to independent customers. Adjustments were made for all costs incurred between importation and resale including sales, general and administrative expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation.

1.4. *Comparison*

(82) 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, insurance, handling, loading and ancillary costs, commissions, packing and credit, where applicable and supported by verified evidence.

1.5. *Dumping margin*

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

(84) The investigation showed that dumping took place during the ERIP. When comparing weighted average actual export prices with a weighted average normal value, this comparison showed a dumping margin of over 74 % for EuroChem, over 54 % for Acron and over 92 % for Minudiobreniya.

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

(85) Imports from Russia decreased from around 785 000 tonnes in 2003 to around 155 891 tonnes in the ERIP. Their market share (around 2 %) is still significant. This decrease has been influenced by the incorporation to the Community of 10 new Member States in 2004 and two new Member States in 2007 that were importing from Russia without anti-dumping duties before these dates and by the current level of the duties in force.

2.1. *Past behaviour*

(86) It should be recalled that Russian exporters have already tried to unlawfully increase their exports to the Community, in two ways. In 1998, by Regulation (EC) No 663/98 duties were increased to their current level (EUR 47/tonne, or around 40 % of Russian current export price) because it was found that exporters engaged

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in absorption (i.e. export prices were decreased, thereby increasing dumping).

(87) In June 2005, by Regulation (EC) No 945/2005, duties were extended to other AN forms exported by Russia, which although declared as 'compound fertilisers' were essentially AN. This shows that Russian exporters are systematically trying to increase their export volumes of AN to the Community at dumped prices.

(88) It should also be noted that during the ERIP, around 50 % of the exports to the Community of the Russian cooperating producers were made to Bulgaria and Romania (which were not subject to anti-dumping duties until 1 January 2007). The fact that exports to those countries before enlargement were dumped, are an indication that, should measures disappear, dumping is likely to take place.

2.2. *Price behaviour by Russian exporters when selling to third countries*

(89) The investigation has shown that Russian exporters are dumping when selling to third country markets. Export prices to such markets are, at most, in line with export prices to the Community.

(90) In addition, imports of AN from Russia are subject to significant anti-dumping measures in Australia and in the USA. The foregoing indicates a structural propensity to practise dumping, and a likelihood that exports to the Community would be made at dumped prices, should measures lapse.

2.3. *Spare capacities and likely use thereof by exporters*

(91) During the ERIP, the spare capacity of known Russian exporters was estimated to be in the range of 1,7 to 2,3 million tonnes. This quantity would correspond to almost one-fourth of total Community consumption of AN. No factors were detected in the investigation which could prevent the activation of this capacity in the short term. The likely use of this spare capacity was analysed.

(92) To begin with, some of the largest export markets for AN in the world are protected from Russian imports. In particular, imports of AN from Russia are subject to significant anti-dumping measures in Australia and in the USA as well as outright bans in China. Therefore, it was concluded that such spare capacity would, in all likelihood, not be absorbed by these markets.

(93) It has been argued by Russian exporters that consumption in CIS countries is steadily increasing since 2005 and is expected to continue to do so in the coming years, and that Russian production of AN will be primarily directed at the full satisfaction of those markets. These allegations were not adequately substantiated by verifiable evidence. In addition, they appeared incomplete in the sense that they did not take into account the existence of AN production in other CIS states, which could well compete with Russian sales to those markets. In any event, the alleged evolution of CIS consumption, according to IFA's statistics ([1]) would still leave significant available spare capacities in the short and medium term. Finally, given the existing price level in the Community, which, according to the data supplied by cooperating companies is substantially higher than in Russia and in CIS markets, Russian companies are likely to have an incentive to use spare capacity for exports to the Community rather than for sales in the domestic market or the CIS markets.

([1]) International Fertiliser Industry Association.

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(94) No allegations were made regarding the likelihood of other sales to other third country markets absorbing the aforementioned spare capacity. In any event, the investigation analysed other third country markets on the basis of the information provided by cooperating parties and found that, on the basis of their consumption, sources of AN and price levels, they were not likely to absorb additional Russian exports to an extent that the spare capacities available for export to the Community would cease to be significant.

(95) Finally, it was confirmed that the Community is the most important AN market in the world, that proximity to Russia facilitates logistical considerations, and that Russian exporters have well-established distribution channels therein.

(96) In conclusion, it was found that a substantial amount of additional exports to the Community, on the basis of the use of available spare capacities, would in all likelihood be made by Russian exporters, should the current measures be repealed.

2.4. *Incentives to redirect sales volumes to the Community*

(97) The aforementioned differentials between price levels in the Community and those in third country markets underline that it would be more profitable for Russian exporters to redirect export volumes from third countries to the Community. Therefore, significant export quantities could also emanate from this source.

2.5. *Conclusion*

(98) It is therefore concluded that, given the relative levels of prices, the spare capacities and the incentives observed above, there is a likelihood: (i) of dumping, and (ii) of a substantial increase of the quantities exported to the Community, should anti-dumping measures in force be lifted.

D.2. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

1. **Definition of Community production and Community industry**

(99) Within the Community, the like product is manufactured by 23 producers whose output constitutes the total Community production of the like product within the meaning of Article 4(1) of the basic Regulation.

(100) Eleven Community producers cooperated with the investigation:

— Achema AB (Jonavos, Lithuania),

— Zakłady Azotowe Anwil SA (Włockławek, Poland),

— BASF AG (Ludwigshafen, Germany),

— DSM Agro BV (Sittard, The Netherlands),

— Fertiberia SA (Madrid, Spain),

— Grande Paroisse SA (Paris, France),

— Kemira Growhow Oyj (Corporate office in Helsinki, Finland, production in UK and Belgium),

— Terra Nitrogen Limited (Stockton-on-Tees, UK),

— Yara SA (Corporate offices in Brussels, Belgium (production in the Netherlands, France, Germany, the UK and Italy),

— Zakłady Azotowe Puławy SA (Puławy, Poland),

— Neochim PLC, (Dimitrovgrad, Bulgaria).

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(101) As these 11 Community producers accounted for more than 75 % of the total Community production during the ERIP, it is therefore considered that they 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'.

(102) As indicated 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 cooperating producers provided certain general data for the injury analysis.

2. **Situation on the Community market**

2.1. *Consumption on the Community market*

(103) 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 and 2007, for the sake of clarity and consistency of the analysis, the all injury indicators were established on the basis of the EU-27 market throughout the period considered.

(104) Between 2003 and 2006, Community consumption decreased by 16 % in order to rebound partially in the ERIP. Altogether, a downwards trend is noted, mirrored by a total decrease of 10 % between 2003 and the ERIP.

Table 1

	2003	2004	2005	2006	ERIP
Total EC consumption in tonnes	8 296 644	7 834 089	7 861 796	6 983 467	7 463 863
Index total EC consumption (2003 = 100)	*100*	*94*	*95*	*84*	*90*

2.2. *Development of volumes, market shares and prices of imports from Russia*

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

Table 2

	2003	2004	2005	2006	ERIP
Volume of imports (tonnes)	785 045	616 394	328 972	217 540	155 891
Market share	9,5 %	7,9 %	4,2 %	3,1 %	2,1 %
Prices of imports (EUR/tonne)	73	99	122	123	124
Index (prices) (2003 = 100)	*100*	*136*	*167*	*168*	*170*

(106) The volume of imports from Russia decreased over the period considered. Their market share also dropped from 9,5 % in 2003 to 2,1 % in the ERIP. Prices evolved from EUR 73 to EUR 124/tonne during the period considered. This evolution reflects the general upwards trend observed for the world market — but not the increase in the prices of the main raw material: gas.

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(107) The comparison showed that imports from Russia were undercutting the prices of the Community industry by more than 30 % or at least EUR 60/tonne, not counting the duty in place. Even when adding the anti-dumping duty on top of Russian export prices, there is still undercutting of more than 7 % or at least EUR 13/tonne.

2.3. *Volumes and market shares of imports from other countries*

(108) 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.

Table 3

	2003	2004	2005	2006	ERIP
Volume of imports from Ukraine (tonnes)	132 091	65 201	76 867	43 270	32 421
Market share	1,6 %	0,8 %	1,0 %	0,6 %	0,4 %
Prices of imports from Ukraine (EUR/tonne)	83	114	123	139	136
Volume of imports from Georgia (tonnes)	100 025	132 457	153 844	85 870	121 590
Market share	1,2 %	1,7 %	2,0 %	1,2 %	1,6 %
Prices of imports from Georgia (EUR/tonne)	113	137	164	177	176
Volume of imports from all other countries (tonnes)	262 909	74 654	65 965	124 451	158 524
Market share	3,2 %	1,0 %	0,8 %	1,8 %	2,1 %
Prices of imports from all other countries (EUR/tonne)	133	152	190	169	164

(109) Whereas Georgia increased its export volumes from 2003 to the ERIP, Ukraine and other third countries decreased them over the period considered. It is noted that imports from Ukraine are subject to an anti-dumping duty ranging between EUR 29,26 per tonne and of EUR 33,25 per tonne, which was extended by Regulation (EC) No 442/2007. In this respect, it is also noted that the import prices from all third countries were consistently higher than those from Russia, throughout the period considered.

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

(110) 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*

(111) Some of the cooperating Community industry producers were found to use the like product for further downstream applications. The resulting products do not compete on the market with the like product.

(112) Such internal captive transfers of ammonium nitrate production do not enter the open market and thus are not in direct competition with imports of the product concerned. It was therefore

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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. The investigation showed that the captive use represents a not insignificant fraction of the Community industry's production, i.e. up to 25 % of total production during the period considered. The quantities concerned were disregarded or, where appropriate and as indicated below, considered separately for the sake of analysing the respective injury indicators.

(113) Where recourse is made to sampling, in accordance with established practice, certain injury indicators (production, production capacity, sales, market share, growth, employment and productivity) are analysed for the Community industry as a whole ('CI' in the enclosed tables), while those injury indicators relating to the performances of individual companies, i.e. prices, stocks, 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 ('SP' in the enclosed tables).

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

(a) Production

(114) The Community industry's total production, including captive transfers, remained relatively stable between 2003 and 2005 at a level of around 8,4 million tonnes. It dropped in 2006 to about 7,7 million tonnes and increased in the ERIP, reaching its former level of 2003. As for the production used for captive transfers, it decreased between 2003 and 2006 and increased in the ERIP. This increase in the ERIP was mainly due to the fact that one operator restructured in this period in view of developing its own internal consumption. As for the production destined for sales, it decreased by 5 % between 2003 and the ERIP.

Table 4

	2003	2004	2005	2006	ERIP
CI production (tonnes, including captive transfers)	8 395 678	8 228 283	8 407 904	7 648 770	8 444 436
Index (2003 = 100)	*100*	*98*	*100*	*91*	*101*
Of which CI production used for captive transfers	1 758 139	1 686 280	1 638 705	1 526 039	2 122 099
Index (2003 = 100)	*100*	*96*	*93*	*87*	*121*
Of which CI production used for sales	6 637 539	6 542 003	6 769 200	6 122 731	6 322 337
Index (2003 = 100)	*100*	*99*	*102*	*92*	*95*

Source: Information from complainants, sampling questionnaire replies and verified questionnaire replies.

(b) Capacity and capacity utilisation rates

(115) Production capacity showed a decreasing trend between 2003 and 2006. It increased in the ERIP when one of the Community producers restructured its facilities for captive use. As already noted in the original investigation, capacity utilisation for this type of production and industry can be affected by the production

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of other products which can be produced on the same production equipment and is therefore less meaningful as an injury indicator.

Table 5

	2003	2004	2005	2006	ERIP
CI production capacity (tonnes)	12 624 286	12 460 988	12 459 886	12 366 776	12 826 621
CI capacity utilisation	67 %	66 %	67 %	62 %	66 %

(c) Sales volume

(116) Sales volumes by the Community industry on the Community market decreased by 8 % between 2003 and the ERIP. This development is in line with the general trend of decreasing consumption on the Community market.

Table 6

	2003	2004	2005	2006	ERIP
CI EC sales volume (tonnes)	5 752 934	5 566 383	5 708 591	4 917 321	5 300 075
Index (2003 = 100)	*100*	*97*	*99*	*85*	*92*

(d) Market share

(117) The market share held by the Community industry increased by 3,3 percentage points between 2003 and 2005, to drop thereafter by 1,6 percentage points during the ERIP. Overall, there has been an increase of 1,7 percentage points.

Table 7

	2003	2004	2005	2006	ERIP
Market share of Community industry	69,3 %	71,1 %	72,6 %	70,4 %	71,0 %
Index (2003 = 100)	*100*	*102*	*105*	*102*	*102*

(e) Growth

(118) As the decrease in sales was slightly lower than the decrease in consumption, the Community industry gained some market share.

(f) Employment

(119) The level of employment of the Community industry decreased by 8 % between 2003 and the ERIP, and thus more importantly than did production. This mirrors the concern of the industry to continuously increase its productivity and competitiveness.

Table 8

	2003	2004	2005	2006	ERIP
CI employment product concerned	2 449	2 403	2 369	2 256	2 262
Index (2003 = 100)	*100*	*98*	*97*	*92*	*92*

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(g) Productivity

(120) The output per person employed by the Community industry per year increased by 9 % between 2003 and the ERIP, showing thus the combined positive impact of reduced employment and increase in production of the Community industry.

Table 9

	2003	2004	2005	2006	ERIP
CI productivity (tonnes per employee)	3 428	3 425	3 549	3 391	3 734
Index (2003 = 100)	*100*	*100*	*104*	*99*	*109*

(h) Magnitude of dumping margin

(121) Imports from Russia were made at significantly dumped prices. Volumes amounted to a market share of about 2 %, which, for commodity-like products such as AN can have a significant impact on the Community industry as a whole. However, the measures appear to have neutralised most of this impact in the case at hand.

3.3. *Data relating to the sampled Community producers*

(a) Sales prices and factors affecting domestic prices

(122) The sampled Community industry producers' average net sales price increased substantially between 2003 and the ERIP reflecting the prevailing favourable international market conditions of AN during the same period but also the pressure to increase its sales prices due to higher input costs (in particular gas).

Table 10

	2003	2004	2005	2006	ERIP
SP unit price EC market (EUR/tonne)	125	139	160	177	178
Index (2003 = 100)	*100*	*111*	*129*	*142*	*143*
SP sales volume to third countries (tonnes)	287 696	338 001	314 876	324 795	385 287
Index (2003 = 100)	*100*	*117*	*109*	*113*	*134*

(b) Stocks

(123) The level of closing stocks of the sampled producers more than doubled between 2003 and the ERIP. This may reflect increasing difficulties to sell in a context of decreasing consumption.

Table 11

	2003	2004	2005	2006	ERIP
SP closing stocks (tonnes)	136 769	105 162	174 197	281 922	281 656
Index (2003 = 100)	*100*	*77*	*127*	*206*	*206*

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(c) Wages

(124) Between 2003 and the ERIP, the average wage per employee increased by 13 %, 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.

Table 12

	2003	2004	2005	2006	ERIP
SP annual labour cost per employee (thousand EUR)	49,9	50,3	53,3	56,6	56,6
Index (2003 = 100)	*100*	*101*	*107*	*113*	*113*

(d) Investments

(125) Annual investments in the like product made by the four sampled producers developed positively during the period considered, i.e. increased by 121 %, although they showed some fluctuations. These investments related mainly to the modernisation of machinery. This shows the efforts of the Community industry to continuously improve its productivity and competitiveness.

Table 13

	2003	2004	2005	2006	ERIP
SP net investments (thousand EUR)	20 016	23 142	44 719	38 258	44 305
Index (2003 = 100)	*100*	*116*	*223*	*191*	*221*

(e) Profitability on sales and return on capital employed

(126) In general, profitability has been in the 8 % range. This range is defined as the level to be obtained in the absence of injurious dumping. This shows that measures have had a positive effect. However, 2006 and the ERIP have shown less favourable results, underlining that there is a certain underlying fragility in this respect. The return on capital employed (ROCE), expressed as the profit in percent of the net book value of assets (after depreciation), broadly followed the profitability trend over the whole period considered.

Table 14

	2003	2004	2005	2006	ERIP
SP profitability of EC sales to unrelated customers (% of net sales price)	5,8 %	8,9 %	9,6 %	5,0 %	7,2 %
Index (2003 = 100)	*100*	*152*	*163*	*86*	*123*
SP ROCE (profit in % of net book value of investment)	11,5 %	21,5 %	25,8 %	13,0 %	19,5 %
Index (2003 = 100)	*100*	*187*	*224*	*113*	*169*

(f) Cash-flow and ability to raise capital

(127) Cash-flow has slightly decreased by 6 % during the period considered, after showing some fluctuations and reaching a particular low level in 2006. It is noted that profitability on net

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sales also reached its lowest level in 2006 in order to rebound somewhat in the ERIP.

Table 15

	2003	2004	2005	2006	ERIP
SP cash-flow (thousand EUR)	65 390	77 896	77 326	26 434	61 528
Index (2003 = 100)	*100*	*119*	*118*	*40*	*94*

(128) 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 on the situation of the Community industry*

(129) Between 2003 and the ERIP, injury indicators showed an improvement, with nuances. Market share increased, albeit not significantly and not because of sales (which decreased) but rather due to an over-proportional decrease in consumption. Unit sales prices increased, but to a large extent due to input cost rises, and less than could have been expected in the general context of high fertiliser prices. Production has not decreased even though consumption has dropped — apparently not due to the Community industry's improved market position, but rather to an increase of captive transfers, which seemingly reflects a defensive reaction to slackening demand. Profitability has also improved in general, but shown a certain fragility in 2006 and the ERIP.

(130) Cash-flow mirrored to some extent the trends observed for profits. Wages developed moderately and the Community industry continued to invest. The productivity increased, reflecting the efforts of the Community industry to rationalise its operations and improve them through investments.

(131) The applicant further alleged that, in the case of the fertiliser industry, return on sales is not an appropriate indicator of injury as regards profits, and that return on capital employed and/or return on investment are qualitatively more adequate for such an assessment. Furthermore, it was argued that, on the basis of the latter indicators, the Community industry was suffering injury.

(132) Given the particular characteristics of the fertiliser industry (*inter alia*, its capital intensiveness) and the nature of the fertiliser market (the volatility of its raw materials prices and of final product prices), it is agreed that return on sales, on its own, may not necessarily be the most telling indicator regarding profitability, and that it should be complemented with indicators such as return on capital employed and return on investment. However, the applicant has not submitted any evidence that, in the absence of the dumped imports, the Community industry would have been able to obtain returns at the level requested. Neither did the applicant show what profit margin would have been achieved by the Community industry but for the dumped imports, as the Court of First Instance, in its judgment in Case T-210/95 ([1]) established should be done. In paragraph 60 therein, it was confirmed that '… the profit margin to be used by the Council when calculating the target price that will remove the injury in question must be limited to the profit margin which the

([1]) European Court reports 1999 Page II-03291.

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Community industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports'. This claim was therefore rejected. The extent of the removal of injury witnessed over the period is to a large degree due to the existence of measures. By increasing resale prices in the Community, measures have prevented an increase in export volumes at very low prices, thereby allowing the Community industry to achieve the aforementioned improvement.

4. **Likelihood of continuation/recurrence of injury**

4.1. *General*

(133) In this context, two main parameters were analysed: (i) likely export volumes and prices of the country concerned, and (ii) the likely effect of those projected volumes and prices from the country concerned on the Community industry.

4.2. *Likely export volumes and prices of the country concerned*

(134) There is a known spare capacity of around 2 million tonnes of the Russian producers, representing about a quarter of the Community market. This directly available surplus capacity indicates that Russian producers have the possibility to increase in the short term their current production and thus also their exports of AN.

(135) Moreover, given that demand on the Russian market has been stagnant at a relatively low level for many years, Russian producers are heavily depending on exports to third countries. As explained above, these exports were made at prices substantially lower than the exports to the Community.

(136) In the above context, the Community market would appear to be attractive for the Russian 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. The relative proximity of the Community market, as compared to other export markets other than the CIS countries, would also render the Community market more attractive and would therefore lead to the redirection to the Community of current exports by Russian producers to third countries.

(137) One party claimed that, to some extent, the Community market has lost its attractiveness to Russian producers. It argued that after the EU enlargement of 2004 and 2007 the Community market would be supplied by the Community producers to a larger degree than previously. In addition, some Member States started applying restrictions on the usage of AN according to that party. These arguments had to be rejected. The impact of any more restricted use would equally affect Community and Russian producers. Self-supply of the Community market may have increased after the enlargement in 2004 and 2007, also because the new Member States started benefiting from the anti-dumping duty in place. Indeed, imports from Russia saw declines between 2005 and the ERIP. However, despite any alleged self-supply, prices have gone up in the Community during the same period. Prices went up in the Community significantly for the reason that input costs (gas) increased drastically. The Community industry was able to pass on these increased costs only because the anti-dumping measures in place showed some effect. In turn, because of the prevailing high price level the Community market should be very attractive for Russian producers that yield significantly lower prices both on their domestic and on third countries' exports markets.

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(138) A claim was made that Community producers were increasingly less exposed to the alleged gas price gap. It was argued that Community producers have imported increased quantities of cheap ammonium over the period considered and that therefore they were less dependent on gas. Also, in some cases, it was argued that Community producers were able to buy natural gas at conditions more favourable than Waidhaus conditions. These claims were unfounded. Although ammonium imports were on the rise, the investigation has not detected a significantly increased use for the production of AN. The main share of ammonium imports was apparently used for other applications. Neither did the investigation uncover any significant conditions more favourable than Waidhaus. Gas price differentials as described above continued to be very substantial, with the significant impact on cost (and hence price levels) mentioned above. This creates a situation where the price levels in the Community would be structurally more attractive for Russian exporters in the foreseeable future.

(139) In order to increase their market share in this commodity-like product where price conditions are a key factor, the Russian exporters would be likely to compete in terms of price. As outlined above, there are a number of facts pointing to the likelihood of very low export price levels by Russian exporters. Given that even with measures in place, a certain degree of undercutting exists, such undercutting would only increase in view of the likely drop in prices.

(140) In addition, it is underlined that Russian producers (to the extent they benefit from the gas price gap generated by dual pricing) can very well export AN at very low, dumped prices to the Community and still obtain robust profits on these dumped exports. This factor also adds to the attractiveness of the Community market for Russian producers – even at very low export prices.

(141) On the basis of the above, it would therefore be likely that significant additional volumes of AN produced in Russia would be exported to the Community (both from the use of available spare capacity and/or from redirection of existing exports) at dumped prices which substantially undercut Community industry's prices, if measure are allowed to lapse.

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

(142) In view of the above established likelihood of significant increase of export volumes from Russia into the Community market at dumped and undercutting prices, the Community industry would in all likelihood 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. As a consequence, profits would strongly decrease.

(143) With regard to the favourable market conditions shown by some indicators during 2006 and the ERIP, 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/demand balance in combination with increased input costs (gas) resulted in high prices for all nitrogen fertilisers. AN 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

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reduced or increased demand. With particular regard to the Community market, the demand of AN is expected to slightly decrease in the years to come. In fact, total consumption has already shown a downwards trend over the period considered. Given that the prices charged by the Russians were significantly undercutting the prices of the Community industry, the likely increase in import volumes from Russia will force the Community industry either to lower significantly its prices, 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 jeopardy. Therefore, a deterioration of the Community industry's overall performance is likely to result from any repeal of the measures.

4.4. *Conclusion on likelihood of recurrence of injury*

(144) 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 partly achieved in the period considered, leading to a likely recurrence of injury.

E. **COMMUNITY INTEREST**

1. **Preliminary remarks**

(145) 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.

(146) 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.

(147) 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**

(148) The Community industry has proven to be a structurally viable industry. This was confirmed by the relatively positive development of its economic situation throughout the period considered. In particular, the Community industry maintained viable profit margins against a background of rising input costs (in particular gas) and was able to increase its market share over the period considered.

(149) 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

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exerting a downward pressure on the sales prices which will endanger its currently positive financial situation.

3. **Interest of importers**

(150) As mentioned in recital (23), no unrelated importer originating in the country concerned cooperated with the present investigation.

(151) It is recalled that in previous investigations it was found that the impact of the imposition of measures would not be significant to the extent that as a rule, importers do not only deal in AN but also, to a significant extent, in other fertilisers. The lifting of anti-dumping measures on other fertilisers can only reinforce the foregoing. In that context, anti-dumping measures applicable on imports of urea originating in Russia and in Belarus, Croatia, Libya and Ukraine were lifted in August 2007 and March 2008 respectively ([1]). The downward trend in imports from the country concerned during the period considered leads to the conclusion that some importers may indeed have suffered negative consequences of the imposition of measures. However, in the absence of cooperation of importers and thus of any conclusive evidence allowing to assess any significant negative consequences, it was concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

(152) 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**

(153) Users of AN are farmers in the Community. Some farmers associations made submissions, claiming that farmers' incomes have been under pressure because fertiliser prices have risen over the last years, some of their output products have seen price decreases and environmental regulation has increased the cost burden. These claims, however, were not substantiated.

(154) EFMA provided substantiated agronomic and economic evidence which showed that AN represents a small part of total production costs for the farmers. Therefore, it was found that, on balance, the measures currently in force did not have any substantial negative effect on their economic situation; and that the continuation of measures would not adversely affect the financial interests of the farmers.

5. **Conclusion on Community interest**

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

F. **UNDERTAKINGS**

(156) The Commission on 19 December 2006 ([2]) initiated a partial interim review following a request lodged by OJSC Acron and OJSC Dorogobuzh, members of 'Acron' Holding Company. The results of that interim review were set out in Council Regulation (EC) No 236/2008 ([3]). During the interim review Acron expressed an interest in offering a price undertaking but failed to submit a duly substantiated offer within the deadline as set out in Article 8(2) of the basic Regulation. However, as stated in recitals (56) and (57) of the abovementioned Council Regulation, the Council considered that Acron should exceptionally be

([1]) OJ L 198, 31.7.2007, p. 4 and OJ L 75, 18.3.2008, p. 33.
([2]) OJ C 311, 19.12.2006, p. 55.
([3]) OJ L 75, 18.3.2008, p. 1.

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allowed to complete its undertaking offer within 10 calendar days from entry into force of that Regulation due to the complexity of several issues, namely (1) the volatility of the price of the product concerned which would require some form of indexation of minimum prices, while at the same time the volatility is not sufficiently explained by the key cost driver; and (2) the particular market situation for the product concerned. Subsequent to the publication of Regulation (EC) No 236/2008 and within the deadline as set out in that Regulation, Acron submitted an acceptable price undertaking in accordance with Article 8(1) of the basic Regulation.

(157) During the course of the partial interim review initiated on 30 November 2005 ([1]), EuroChem offered an acceptable price undertaking in accordance with Article 8(1) of the basic Regulation.

(158) The Commission by Decision 2008/577/EC ([2]), accepted the undertaking's offers. The Decision sets out in more detail the reasons accepting these undertakings. The Council recognises that the undertaking's offers eliminate the injurious effect of dumping and limits to a sufficient degree the risk of circumvention.

(159) To further enable the Commission and the customs authorities to effectively monitor the compliance of the companies with the undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on (i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in the Annex, (ii) the fact that the imported goods are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community, and (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice. Where the above conditions are not met the appropriate anti-dumping duty shall be incurred at the time of acceptance of the declaration for release into free circulation.

(160) Whenever the Commission withdraws, pursuant to Article 8(9) of the basic Regulation, its acceptance of an undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices as invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation of these transactions.

(161) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals (159) and (160) even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

(162) Pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertakings are found.

(163) For the reasons stated above, the undertakings offered by EuroChem and Acron are therefore considered acceptable by the Commission and EuroChem and Acron have been informed of the essential facts, considerations and obligations upon which acceptance is based.

(164) In the event of a breach or withdrawal of the undertakings, or in case of withdrawal of acceptance of undertaking by the

([1]) OJ C 300, 30.11.2005, p. 8.
([2]) See page 43 of this Official Journal.

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Commission, the anti-dumping duty which has been imposed by the Council, in accordance of Article 9(4) shall automatically apply by means of Article 8(9) of the basic Regulation.

G. **FINAL PROVISIONS**

(165) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures on imports from Russia be maintained and that the level of the measures would be amended where warranted. They were also granted a period to submit comments and claims subsequent to disclosure. No comments were received which would warrant a change in the above conclusions.

1. **Interim review limited to EuroChem**

(166) In view of the conclusions reached with regard to dumping and the lasting nature of the changed circumstances, the individual anti-dumping duty on imports of the product concerned in respect of EuroChem should be amended in order to reflect the new dumping margin found.

(167) Since the dumping level found is lower than the injury margin established in the previous investigation, the duty rate should be set at the dumping level found.

(168) Since in the original investigation the duty was imposed in the form of a specific amount per tonne, it should have the same form in the current investigation. Thus, the duty is EUR 32,82/tonne. The duty should be applied, in accordance with Regulation (EC) No 945/2005, in proportion to the content of AN and of other marginal substances and nutrients, in the case of compounds of AN fertilisers with a nitrogen content exceeding 28 % by weight.

(169) Although this duty has been based on data from NAK Azot, as stated in recital (30) above, it will apply to all sales made by EuroChem, regardless of by which related factory the product has been manufactured.

2. **Expiry review**

(170) The anti-dumping measures applicable to imports of AN originating in Russia should be maintained pursuant to Article 11(2) of the basic Regulation.

3. **Final consideration**

(171) Given that two exporters were, in the context of partial interim reviews given the opportunity to offer undertakings, special consideration will be given, as appropriate, to the initiation of interim reviews in accordance with Article 11(3) of the basic Regulation, to examine any further undertaking offers, should the Commission receive sufficient evidence that such reviews are warranted.

H. **DUTIES**

(172) In view of the conclusions reached with regard to continuation of dumping, likelihood of recurrence of injury and Community interest, the anti-dumping measures on imports of AN originating in Russia should be maintained in order to prevent a recurrence of injury being caused to the Community industry by the dumped imports,

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HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to 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 Russia from producer Open Joint Stock Company (OJSC) 'Mineral and Chemical Company EuroChem', is hereby terminated and Article 1(2) of Regulation (EC) No 658/2002 shall be replaced by the following:

'2. The rate of the definitive anti-dumping duty shall be a fixed amount as specified below:

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(a) For goods produced by Open Joint Stock Company (OJSC) "Azot", Novomoskovsk, Russia or by Open Joint Stock Company (OJSC) "Nevinnomyssky Azot", Nevinnomyssk, Russia and either sold directly to the first independent customer in the Community or sold by EuroChem Trading GmbH, Zug, Switzerland or via Open Joint Stock Company (OJSC) Mineral and Chemical Company "EuroChem", Moscow, Russia, and EuroChem Trading GmbH, Zug, Switzerland to the first independent customer in the Community (TARIC additional code A522):

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Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
— Ammonium nitrate other than in aqueous solutions	3102 30 90	—	32,82
— Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	32,82
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	32,82
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	32,82
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	32,82
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight with no phosphorus and no potassium content	3105 10 00	10	32,82
— 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	31,84
— 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	30,85
— 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	29,87

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Product description	CN code	TARIC code	Fixed amount of duty (EUR per 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	28,88
— 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	31,84
— 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	30,85
— 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	29,87
— 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	28,88
— 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	31,84
— 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	30,85
— 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	29,87
— 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	29,41
— 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	31,84
— 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	30,85
— 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	29,87
— 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	29,41

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Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
— 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	31,84
— 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	30,85
— 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	29,87
— 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	28,88

(b) For all other companies (TARIC additional code A999):

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
— Ammonium nitrate other than in aqueous solutions	3102 30 90	—	47,07
— Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	47,07
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	47,07
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	47,07
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	47,07
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight with no phosphorus and no potassium content	3105 10 00	10	47,07
— 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	45,66
— 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	44,25
— 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	42,83
— 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	41,42

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Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
— 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	45,66
— 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	44,25
— 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	42,83
— 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	41,42
— 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	45,66
— 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	44,25
— 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	42,83
— 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	42,17
— 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	45,66
— 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	44,25
— 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	42,83
— 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	42,17
— 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	45,66
— 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	44,25

▼B

Product description	CN code	TARIC code	Fixed amount of duty (EUR per 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	42,83
— 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	41,42’

Article 2

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 Russia.

2. The rate of the definitive anti-dumping duty shall be a fixed amount as specified below:

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(a) For goods produced by Open Joint Stock Company (OJSC) ‘Azot’, Novomoskovsk, Russia or by Open Joint Stock Company (OJSC) ‘Nevinnomyssky Azot’, Nevinnomyssk, Russia and either sold directly to the first independent customer in the Community or sold by EuroChem Trading GmbH, Zug, Switzerland or via Open Joint Stock Company (OJSC) Mineral and Chemical Company ‘EuroChem’, Moscow, Russia, and EuroChem Trading GmbH, Zug, Switzerland to the first independent customer in the Community (TARIC additional code A522):

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Product description	CN code	TARIC code	Fixed amount of duty (Euro per tonne)
— Ammonium nitrate other than in aqueous solutions	3102 30 90	—	32,82
— Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	32,82
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	32,82
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	32,82
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	32,82
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight with no phosphorus and no potassium content	3105 10 00	10	32,82
— 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	31,84
— 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	30,85

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Product description	CN code	TARIC code	Fixed amount of duty (Euro per 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 6 % by weight or more but less than 9 % by weight	3105 10 00	40	29,87
— 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	28,88
— 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	31,84
— 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	30,85
— 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	29,87
— 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	28,88
— 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	31,84
— 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	30,85
— 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	29,87
— 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	29,41
— 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	31,84
— 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	30,85
— 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	29,87
— 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	29,41

▼B

Product description	CN code	TARIC code	Fixed amount of duty (Euro per tonne)
— 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	31,84
— 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	30,85
— 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	29,87
— 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	28,88

▼M1

(b) For goods produced by JSC Kirovo-Chepetsky Khimichesky Kombinat (TARIC additional code A959):

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
— Ammonium nitrate other than in aqueous solutions	3102 30 90	—	47,07
— Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances with a nitrogen content exceeding 28 % by weight	3102 40 90	—	47,07

For goods mentioned in Article 2(1) produced by JSC Kirovo-Chepetsky Khimichesky Kombinat and which are not mentioned in the table above, no anti-dumping duty shall apply.

▼B

►M1 (c) ◄ For all other companies (TARIC additional code A999):

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
— Ammonium nitrate other than in aqueous solutions	3102 30 90	—	47,07
— Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	47,07
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	47,07
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	47,07
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	47,07
— Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight with no phosphorus and no potassium content	3105 10 00	10	47,07

▼B

Product description	CN code	TARIC code	Fixed amount of duty (EUR per 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 less than 3 % by weight	3105 10 00	20	45,66
— 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	44,25
— 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	42,83
— 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	41,42
— 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	45,66
— 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	44,25
— 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	42,83
— 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	41,42
— 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	45,66
— 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	44,25
— 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	42,83
— 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	42,17
— 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	45,66

▼B

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
— 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	44,25
— 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	42,83
— 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	42,17
— 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	45,66
— 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	44,25
— 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	42,83
— 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	41,42

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 [1], the amount of anti-dumping duty mentioned in paragraph 2 shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. Notwithstanding the first paragraph, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 3.

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

Article 3

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Decision 2008/577/EC, as from time to time amended, shall be exempt from the anti-dumping duty imposed by Article 2, on condition that:

— they are manufactured, shipped and invoiced directly by the said companies 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 the Annex of this Regulation, and

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

▼B

— 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.

Article 4

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.

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ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales to the Community of goods which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Community frontier.
6. The exact description of the goods, including:
   - — the product code number (PCN) used for the purpose of the undertaking,
   - — plain language description of the goods corresponding to the PCN concerned,
   - — the company product code number (CPC),
   - — TARIC code,
   - — quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
   - — price per tonne,
   - — the applicable payment terms,
   - — the applicable delivery terms,
   - — total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the commercial 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 Decision 2008/577/EC. I declare that the information provided in this invoice is complete and correct.'