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►**B** **COMMISSION IMPLEMENTING REGULATION (EU) No 999/2014**

of 23 September 2014

imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

(OJ L 280, 24.9.2014, p. 19)

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COMMISSION IMPLEMENTING REGULATION (EU) No 999/2014

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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) of Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]) and in particular Articles 9(4) and 11(2) and (5) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 2022/95 ([2]), the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Pursuant to a further investigation, which established that the duty was being absorbed, the measures were amended by Council Regulation (EC) No 663/98 ([3]). Following a first expiry review and a first interim review pursuant to Articles 11(2) and 11(3) of Regulation (EC) No 1225/2009 (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. Subsequently, a product scope interim review pursuant to Article 11(3) of the basic Regulation 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

([1]) OJ L 343, 22.12.2009, p. 51.

([2]) Council Regulation (EC) No 2022/95 of 16 August 1995 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 198, 23.8.1995, p. 1).

([3]) Council Regulation (EC) No 663/98 of 23 March 1998 amending Regulation (EC) No 2022/95 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 93, 26.3.1998, p. 1).

([4]) Council Regulation (EC) No 658/2002 of 15 April 2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 102, 18.4.2002, p. 1).

([5]) Council Regulation (EC) No 945/2005 of 21 June 2005 amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in, inter alia, Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ L 160, 23.6.2005, p. 1).

▼B

imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently 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 20 originating in Russia.

(2) Following a second expiry review and a second partial interim review pursuant to Article 11(2) and (3) of the basic Regulation, the Council, by Regulation (EC) No 661/2008 ([1]), maintained the measures in force. The duty was left unchanged, except for the EuroChem group ([2]), for which the fixed amount of duty ranged between EUR 28,88 and EUR 32,82 per tonne.

(3) The European Commission (the Commission), by Decision 2008/577/EC ([3]), accepted the undertakings' offers with a quantitative ceiling from the Russian producers JSC Acron and JSC Dorogobuzh, members of Acron Holding Company (referred to jointly as Acron), and from EuroChem group. By Decision 2012/629/EU ([4]), the Commission withdrew its acceptance of the undertaking offered by the EuroChem Group because of the impracticability of the undertaking.

(4) By judgment of 10 September 2008 ([5]), interpreted by judgment of 9 July 2009 ([6]), the General Court annulled Regulation (EC) No 945/2005 in so far as it concerned JSC Kirovo-Chepetsky Khimichesky Kombinat (Kirovo), part of OJSC UCC UralChem (UralChem). The Council, by Regulation (EC) No 989/2009 ([7]), amended Regulation (EC) No 661/2008 accordingly. Consequently, for the company Kirovo the anti-dumping duty (EUR 47,07 per tonne) applies only to imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90.

1.2. **Request for an expiry review**

(5) Following the publication of a notice of impending expiry ([8]) of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of those measures pursuant to Article 11(2) of the basic Regulation. The request

([1]) 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).

([2]) According to Decision 2008/577/EC referred to in the next recital, the EuroChem Group consists of: OJSC 'Azot', Novomoskovsk, Russia, OJSC 'Nevinnomyssky Azot', Nevinnomyssk, Russia, OJSC Mineral and Chemical Company 'Eurochem', Moscow, Russia and EuroChem Trading GmbH, Zug, Switzerland.

([3]) Commission Decision 2008/577/EC of 4 July 2008 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Ukraine (OJ L 185, 12.7.2008, p. 43).

([4]) Commission Decision 2012/629/EU of 10 October 2012 amending Decision 2008/577/EC accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia (OJ L 277, 11.10.2012, p. 8).

([5]) Case T-348/05.

([6]) Case T-348/05 INTP.

([7]) Council Regulation (EC) No 989/2009 of 19 October 2009 amending Regulation (EC) No 661/2008, imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 278, 23.10.2009, p. 1).

([8]) OJ C 349, 15.11.2012, p. 19.

▼B

was lodged on 28 March 2013 by a Union association of manufacturers of fertilisers, 'Fertilisers Europe' (the applicant) on behalf of Union producers representing more than 25 % of the total Union production of the product concerned.

(6) The request was based on the grounds that the expiry of the measures would likely result in continuation and recurrence of dumping and injury to the Union industry.

(7) Following disclosure, the Russian Fertilisers Producers Association (RFPA) claimed that the request for the review was only supported by a certain proportion of Union producers of fertiliser grade ammonium nitrate (FGAN) and that the Union producers of all grades of ammonium nitrate and of other ammonium nitrate fertilisers represent a volume three times bigger than the applicant. This claim is however unfounded since the applicant and the supporters of the request are producers of FGAN as well as of other products covered by this expiry review. Therefore, the request was not supported only by FGAN producers, but also by producers of other types of the product concerned and the quantitative threshold for initiating a review was met.

1.3. **Initiation of an expiry review**

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of an expiry review, the Commission announced, on 12 July 2013, by a notice published in the *Official Journal of the European Union*, (notice of initiation) ([1]) the initiation of an expiry review under Article 11(2) of the basic Regulation.

(9) RFPA submitted comments concerning the measures in force and challenged their legality prior to the initiation of the investigation. The same party also claimed that there were no grounds for the initiation of an expiry review based on the elements sent before the initiation to the Commission on the likelihood of continuation or recurrence of dumping and injury should measures expire.

(10) The Commission services replied to that interested party that it examines in detail the views expressed by parties other than the applicants only after the initiation of the investigation.

(11) The same interested party also requested access to the expiry review request in its version lodged on 28 March 2013, as referred to in the notice of initiation as well as to the deficiency letter issued by the Commission services to the applicants concerning their request for an expiry review in order to be able to better exercise its rights of defence. The Commission services

([1]) OJ C 200, 12.7.2013, p. 12.

▼B

informed the interested party that the decision to initiate an investigation was only based on the consolidated version of the request integrating the reply to the deficiency letter. Early versions and drafts are of no relevance. Therefore, not providing access to the initial version and the letter would not be in breach of the party's rights of defence. The party asked the Hearing Officer for DG Trade to intervene on this alleged breach of rights of defence. The Hearing Officer upheld the position of the Commission services on 4 March 2014.

(12) The interested party also requested access to expiry review requests relating to two other different proceedings. The party claimed that these requests where rejected as unsubstantiated and that access to those documents would enable it to compare the circumstances of the two cases with the pending review, understand the Commission's analysis of the sufficiency of the request in each case and thus adequately exercise its rights of defence. The party received all clarifications from the Commission Services and the Hearing Officer upheld the position of the Commission services on 4 March 2014.

1.4. **Investigation**

1.4.1. *Review investigation period and period considered*

(13) The investigation of a continuation and recurrence of dumping covered the period from 1 July 2012 to 30 June 2013 (‘the review investigation period’ or ‘RIP’). The examination of the trends relevant for the assessment of the likelihood of a recurrence of injury covered the period from 1 January 2010 to 30 June 2013 (the period considered).

(14) Following disclosure, RFPA claimed that compared to the previous expiry review leading to Regulation (EC) No 661/2008 there had been an unjustified change in methodology since the period considered in that review was longer.

(15) The Commission considers that the circumstances alleged by RFPA do not qualify as a change in methodology for the purpose of Article 11(9) of the basic Regulation. In any event, the following should be noted. The Commission practice is that the period considered normally covers the RIP and the three preceding calendar years, unless the RIP itself covers a considerable part of the previous calendar year. In the latter situation, four calendar years may exceptionally be taken into account. This was the case in the previous expiry review. The claim is therefore dismissed.

1.4.2. *Parties concerned by the investigation*

(16) In the notice of initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicants, other known Union producers, the known exporting producers

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and the authorities of Russia (country concerned), known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(17) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer for Directorate-General for Trade.

1.4.3. *Sampling*

(18) In the notice of initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

(a) Sampling of Union producers

(19) In the notice of initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production in the Union and sales volumes on the Union market of the like product during the RIP. This sample consisted of four Union producers located in France, Lithuania, Poland and the United Kingdom ([1]), representing around 42 % of the Union production and 41 % of the Union sales. The Commission invited interested parties to comment on the provisional sample.

(20) An interested party claimed that the provisionally selected sample of Union producers should only include producers of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90 as originally provided by Regulation (EC) No 2022/95, and not also producers of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling within CN codes 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 20, as provided by Regulation (EC) No 945/2005.

(21) The reason for this claim was that the judgment of the Court of First Instance in case T-348/05, referred to in recital 4, annulled Regulation (EC) No 945/2005 which expanded the product scope compared to the initial investigation.

(22) This claim is unfounded. The judgment in question annulled Regulation (EC) No 945/2005 only in so far as it concerned one Russian exporting producer. For all the other Russian producers the applicable product scope remains the one specified in Regulation (EC) No 945/2005. In any event, all sampled Union producers produce ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90. The solid fertilisers listed under the other CN codes are produced by the Union industry and are simply the result of additional chemical or blending activities to create compound fertilisers, also referred to

([1]) AB Achema, Grupa Azoty Zakłady Azotowe, Grow How UK limited and Yara France SA.

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as ‘stabilised fertilisers’ or ‘mixtures’, under the conditions that the nitrogen content exceeds 28 % by weight or the ammonium nitrate content exceeds 80 % by weight.

(23) Therefore, the sample is representative of the Union industry.

(b) Sampling of importers

(24) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the notice of initiation.

(25) No unrelated importer replied to the sampling form and no sampling was therefore necessary.

(c) Sampling of exporting producers in Russia

(26) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in Russia to provide the information specified in the notice of initiation. In addition, the Commission asked the Permanent Mission of Russia to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(27) Eight exporting producers in the country concerned provided the requested information and agreed to be included in the sample. During the RIP, imports into the Union were made mainly under the undertakings that had been accepted. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four exporting producers which could reasonably be investigated within the time available. These producers had the largest volume of total exports sales. They included the two companies that had export sales to the Union under the undertaking during the RIP. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made. The Commission thus decided to retain the proposed sample and all interested parties were accordingly informed of the finally selected sample.

(28) The Commission selected the following four companies for the sample:

— Acron,

— EuroChem,

— UralChem,

— OJSC SBU Azot (SBU Azot).

(29) The sample represented 88 % of the total export sales from Russia in volume (to the Union and to third countries) during the RIP, based on the replies to the sampling forms.

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1.4.4. *Questionnaire replies and verification visits*

(30) The Commission sent questionnaires to all Russian exporting producers that had so requested, as well as to the sampled Union producers, users and trade associations that made themselves known within the time limits set out in the notice of initiation.

(31) Questionnaire replies were received from the four sampled Russian exporting producers and from the four sampled Union producers. One trade association representing users, namely the National Farmers' Union of England and Wales (NFU), provided a partial questionnaire reply.

(32) As regards the Russian exporting producers, only Acron provided a complete questionnaire reply. The other three sampled companies — EuroChem, UralChem and SBU Azot — provided only partial replies, limiting themselves to data on capacity, aggregate sales figures at an ex-works level and certain information on their cost of production. These partial replies did not allow the Commission to fully verify their sales data as well as their cost of production.

(33) The Commission informed the three sampled exporting producers concerned about its intention to apply Article 18 of the basic Regulation regarding the information they failed to provide, and they have used their right to be heard by the Hearing Officer. In addition, in the specific disclosures to each of the three sampled exporting producers concerned the Commission indicated which data provided by each company it had used in its analysis and which data it considered incomplete and had thus used facts available in accordance with Article 18(1) of the basic Regulation. In particular, the Commission used aggregate sales figures at an ex-works level instead of detailed figures based on transaction-by-transaction listings.

(34) Moreover, an association representing importers, the European Fertilisers Import Association (EFIA) asked to be recognised as an interested party on behalf of its members and submitted written comments. Three individual importers indicated they had ceased all imports of fertilisers originating in Russia.

(35) Written submissions were also received from several associations of users, notably the Committee of Professional Agricultural Organisations in the EU (COPA)/General Confederation of Agricultural Cooperatives in the EU (Cogeca), NFU, and from the French associations Afcome (Association Française de Commercialisation et de Mélange d'Engrais) and AGPB (Association Générale des Producteurs de Blé et Autres Céréales).

(36) The Commission sought and verified all the information deemed necessary for the determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

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Union producers

— AB ‘Achema’, Jonolaukio k., Ruklos sen., Jonavos r., Lithuania,

— Grupa Azoty Zakłady Azotowe ‘Puławy’ SA, Poland,

— Grow How UK limited, Ince, United Kingdom,

— Yara France SA, France.

Exporting producers in Russia

— JSC Acron, JSC Dorogobuzh, related trader ZAO Agronova — Bryansk (Acron),

— Eurochem MMC OJSC, OJSC Nevinnomyssky Azot and OJSC Novomoskowskaya Joint-Stock Company Azot (Euro-Chem),

— OJSC UCC UralChem, Berezniki Azot and Kirovo-Chepetsk Chemical works (UralChem),

— Kemerovo JSC Azot and LLC Angarsk Nitrogent Fertiliser Plant (SBU Azot).

Related importer

— Agronova Europe AG, Switzerland (related to Acron).

1.5. **Disclosure**

(37) On 13 June 2014, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to propose maintaining the anti-dumping measures in force and invited all interested parties to comment. The comments made by the interested parties were considered by the Commission and taken into account, where appropriate.

(38) Following disclosure, RFPA repeated that a number of alleged procedural irregularities would have occurred during the review, and noted the Commission's refusal to grant access to the initial version of the request filed by the applicant on 28 March 2013 as well the allegedly untimely granting of access to the non-confidential file.

(39) As regards the request to access the initial request for the review, the Commission services explained several times in writing and orally, including in meetings chaired by the Hearing Officer, the reasons why this request could not be accepted under the applicable legal framework.

(40) As regards the allegedly untimely granting of the access to the non-confidential file, the Commission considers that even if this claim would be warranted, RFPA's rights of defence were not affected. First of all, the Commission disclosed to the RFPA in a timely manner the essential facts on the basis of which the Commission intended to continue the measures and gave RFPA sufficient time to react. Secondly, prior to this disclosure, RFPA had been granted access to the entire non-confidential file.

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(41) RFPA also claimed that ‘contrary to standard practice’, meetings held between the Commission services and the applicant in May and in April 2014 were not recorded in the non-confidential file and that the limited data submitted by the applicant in May 2014 were not accompanied by an adequate non-confidential summary.

(42) It is standard practice that interested parties requesting a hearing present their views orally and accompany them with written submissions. The non-confidential versions of such submissions are inserted in the file open for inspection and made available to any other interested party. These documents record the meetings and hearing held by the Commission services. Therefore, this claim is dismissed as factually incorrect.

(43) As regard the second claim, the non-confidential version of the limited data submitted in May 2014 could not be submitted in a different manner without disclosing business secrets of the Union producers. Therefore, also this claim cannot be accepted.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(44) The product concerned by this review is the same as the product defined in Regulation (EC) No 661/2008, i.e. solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently 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 20 and originating in Russia (hereinafter ‘AN’ or ‘the product concerned’). However, with regard to AN produced by JSC Kirovo-Chepetsky Khimichesky Kombinat (Kirovo) only AN currently falling within CN codes 3102 30 90 and 3102 40 90 is the product concerned pursuant to Regulation (EC) No 989/2009.

(45) The main raw material used in the production of AN is gas, which accounts for 70 % to 80 % of the total costs of production. The product scope extension in 2005 aimed to cover also ammonium nitrate to which were added phosphorus and/or potassium nutrients, since it was found out that these mixtures had essentially the same basic physical and chemical characteristics and the same agronomic properties.

(46) It should be noted that the CN codes 3102 30 90 and 3102 40 90 (respectively, ‘ammonium nitrate other than in aqueous solutions’ and ‘mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight’) can include AN used for industrial purposes (such as the production of explosives) as well as AN used for agricultural purposes. Both types have the same technical and chemical characteristics, can easily be interchangeable and are considered as the product concerned.

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(47) Following disclosure, the representatives of the Russian authorities claimed that the product scope extension made in 2005 is inconsistent with the WTO Anti-Dumping Agreement because no determination of dumping, injury and causal link would have been made with respect to the additional products covered by the 2005 extension.

(48) This claim is unfounded for the reasons already mentioned in recital 22 and therefore rejected.

2.2. **Like product**

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

(50) The AN produced by the Union industry is a like product as regards physical and technical characteristics to the AN exported to the Union by Russia.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

3.1. **Preliminary remarks**

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

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

(52) As indicated in recital 32, only one sampled exporting producer (Acron) fully cooperated in the investigation. However, as set out in recital 3, in 2008 the Commission accepted a price undertaking offer from Acron, which was still in force during the RIP. Due to the existence of the price undertaking Acron's export prices during the RIP were determined by that price undertaking which sets a minimum import price. Consequently, such export prices were not considered as a reliable element in assessing whether dumping would be likely to continue or recur should anti-dumping measures be allowed to lapse.

(53) After disclosure, RFPA argued that this means that the Commission found that no actual dumping is taking place. This is not accurate. As the sampled Russian exporting producers, with the exception of Acron, did not fully cooperate, the Commission did not have sufficient data to carry out any dumping calculations on the basis of the companies' own data. For Acron it could have carried out a dumping calculation, but as explained in recital 52, the Commission considered that its data were not reliable for the purpose of this expiry review.

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(54) Acron claimed that the argument of the Commission that its actual prices to the EU are unreliable because of the existence of the price undertaking, and therefore cannot be used to establish an export price, was unlawful. However, this is not what the Commission argued. The Commission did not claim that export prices could not as such be used because of the price undertaking, but concluded that such export prices were considered an unreliable element in the analysis of the likelihood of continuation or recurrence of dumping in the specific circumstances of this investigation. The Commission does not consider export prices based on a price undertaking a meaningful indicator in the analysis of future behaviour of exporting producers in the absence of measures and any price undertaking.

(55) Contrary to what was argued by Acron, its export prices to the EU cannot be considered to be only the result of normal market conditions. During the full RIP, Acron was the only Russian exporting producer which benefited from a price undertaking, all other Russian exporting producers were subject to the duties. These elements definitely affected the competitive position of Acron as the sole Russian supplier of the EU market.

3.3. **Likelihood of recurrence of dumping**

(56) In light of the considerations set out in recitals 52 to 55, the Commission analysed whether there was evidence of likelihood of recurrence of dumping should the measures lapse. It analysed the following factors: the export price from Russia to other destinations, the production capacity and spare capacity in Russia as a whole and the attractiveness of the Union market and other third markets.

3.3.1. *Exports from Russia to other destinations*

(57) The Commission established that Acron's weighted average ex-works export price to third countries markets such as Brazil, Colombia and Peru during the RIP was lower than the actual average domestic ex-works price paid or payable during the RIP. Acron therefore sold at dumped prices to third country markets, in particular to Brazil, by far the main third country export market.

(58) For the three other sampled exporting producers the Commission also established that their weighted average ex-works sales prices to third countries such as Brazil, Peru, Colombia, Ukraine and Kazakhstan were for each of the three, lower than their average domestic ex-works prices paid or payable during the RIP and were thus also sold at dumped prices. This finding was based on verified data provided by Russian exporting producers, which accounted for around 80 % of the exports to third countries.

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Accordingly, there was no need for the Commission to resort to Russian export statistics, as the RFPA suggested. The export sales of all four sampled exporting producers to third countries were made at a sustainable price level during the RIP.

(59) RFPA argued that data available in the disclosure document suggests that, as far as Eurochem is concerned, there is no dumping or, at best, *de minimis* dumping. The argument is misplaced. The purpose of the analysis is not to calculate the exact dumping margin of Eurochem but to determine whether there would be a likelihood of recurrence of dumping from Russia should measures be allowed to lapse. In that context, the investigation revealed that, also for Eurochem, average ex-works prices to third countries were lower than their average domestic ex-works prices and were thus sold at dumped prices. The pricing policy of Eurochem for sales to third countries (selling for export below domestic prices) is one relevant factor relied upon the overall determination that dumping to the EU would be likely to recur if measures were allowed to lapse.

(60) RFPA argued that no appropriate methodologies were used in the dumping calculations. As explained, the Commission did not calculate dumping margins but simply compared average ex-works domestic prices with ex-works export prices based on data reported by the sampled companies. In a likelihood of recurrence of dumping analysis there is no need to calculate precise dumping margins, so there was no reason to use CIF values, as suggested by RFPA.

(61) RFPA argued that the Commission did not compare prices on a product-by-product type basis and that no level-of-trade adjustment was made. The Commission analysed the claim and found a similar price difference even if the comparison would have been made on a product-by-product level. The level of trade adjustments could in any event not be made, as the sampled companies, except Acron, only partially cooperated and did not provide sufficiently detailed data, in particular detailed transaction-by-transaction listings. Therefore this argument is rejected.

(62) Export sales to the Union during the RIP could not be used for the determining the future behaviour of the three other sampled exporting producers for the following reasons. During the RIP, EuroChem, like Acron, only exported under the price undertaking. EuroChem had sales to the Union only during the period it had an undertaking in force, while it had no sales after the undertaking was withdrawn on 11 October 2012 by the Commission by means of Decision 2012/629/EU. As far as SBU Azot and UralChem are concerned, they did not sell the product concerned to the Union during the RIP.

(63) The Commission did not consider it necessary to determine whether the domestic sales were made in the ordinary course of trade. Indeed the actual domestic prices already show that

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export sales to third country markets are dumped. Therefore, an examination of the profitability of domestic sales, with the potential consequence that the normal value would need to be constructed (on the basis of costs and reasonable profit) if such sales were found to be loss-making, could only have led to an increase of the normal value and hence of the dumping margin found for export sales to third country markets.

(64) In the context of an expiry review and the analysis of the likelihood of recurrence of dumping, it is sufficient to establish that dumping is likely to recur should measures lapse. As a consequence, the Commission saw no need to analyse the profitability of domestic sales and, accordingly, it did not assess the reliability of the costs of production in accordance with Article 2(5) of the basic Regulation.

(65) In view of these considerations, the Commission concludes that the Russian exporting producers currently sell the product concerned at dumped prices to third countries in Latin America, Eastern Europe, Africa and Asia. During the RIP the average ex-works export price of the four sampled exporting producers was 201 EUR/tonne to third countries, while the average ex-works domestic price was 221 EUR/tonne. Therefore, the Commission considers that it is likely that, if the current measures were to be repealed, the Russian exporting producers would also sell to the Union at dumped levels.

(66) RFPA claimed that a comparison of Russian domestic prices with Russian export prices to third countries is meaningless. The Commission however, considers in this respect that these prices are an important indicator in the assessment as to how future exports to the Union are likely to develop in case measures lapse, as Russian exports to most third countries are not subject to anti-dumping duties. In particular in the absence of reliable data about Russian exports to the Union during the RIP, as explained in recital 52, export prices to third countries are an important element in this overall assessment.

(67) The Russian government and Acron argued in this respect that the continuation of measures is already illegal based on the fact that such measures were imposed, by Regulation (EC) No 661/2008, in the first place using the alleged illegal gas adjustment methodology in constructing the normal value.

(68) As set out in recital 63, in this investigation the Commission did not consider it necessary to determine whether the domestic sales were made in the ordinary course of trade with the potential consequence that the normal value would have to be constructed. As Acron correctly pointed out in its submission after disclosure, this does not preclude the construction of the normal value, including necessary adjustments, where appropriate in any future investigations.

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3.3.2. *Spare capacities*

(69) The Commission established the spare capacity of the known Russian producers on the following basis. The data on spare capacity for the four sampled companies were based on their questionnaire replies, corrected where necessary following the verification visits. For plants which produce both ammonium nitrate used as a fertiliser and ammonium nitrate used for industrial purposes (such as the production of explosives), the so-called low-density ammonium nitrate, which is also the product concerned as set out in recital 46, their total spare capacity was taken into account. In the same vein, the spare capacity of plants which produce only ammonium nitrate used for industrial purposes was also taken into account. In addition, the total spare capacity of Kirovo was included in the spare capacity calculation as the spare capacity of other types of ammonium nitrate currently excluded from the application of the anti-dumping measures ([1]) can very easily be used for producing ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90.

(70) Of the remaining five Russian producers one company provided the Commission with an individual reply on its spare capacity. For the rest the data was provided by RFPA.

(71) Where the actual production figures submitted by the non-sampled Russian producers were higher than the reported capacity, the actual production was taken as a basis to determine the actual capacity. In those cases, the reported capacity concerned name plate capacities (that is the designed capacity of the plants) which have not been corrected after the plants have had an update which resulted in an increase of their capacity.

(72) On that basis, the Commission established that during the RIP the Russian exporting producers had a total of 9 592 000 tonnes capacity, while their actual production (including ammonium nitrate used for industrial purposes and other types of ammonium nitrate currently excluded from the application of the anti-dumping measures ([2])) was 8 519 105 tonnes.

(73) Consequently and contrary to the allegations from RFPA that the exporting producers' installed capacity is fully utilised, during the RIP the exporting producers had 1,07 million tonnes spare capacity. The latter quantity corresponds to 16,9 % of the Union consumption (based on the established 6,35 million tonnes consumption during the RIP, see Section 5.1 below).

([1]) That is ammonium nitrate falling within the following CN codes: 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 20.

([2]) That is ammonium nitrate falling within the following CN codes: 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 20.

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(74) However, the Commission also established in the context of its prospective analysis that after the RIP the capacity would further increase by approximately 472 000 tonnes due to the installation of new capacities by some of the sampled exporting producers. The total spare capacity thus amounts to 24,3 % of the Union consumption.

(75) After disclosure, RFPA maintained that no spare capacities exist or at the very least that the Commission should analyse the fact that no spare nameplate capacities exist. Also, RFPA disagreed that new capacities were build up after the RIP.

(76) RFPA and the Russian exporting producers reported their installed capacity based on the nameplate theoretical capacity, which in some cases did not take into account recent upgrades. This was clear to the Commission following the verification visits and taken into account. As correctly stated by RFPA in its submission after disclosure, for non-sampled Russian producers the reported nameplate capacity was accepted for those non-sampled Russian producers who produced less than the reported capacity. For other non-sampled producers, where the reported actual production figures were higher than the reported capacity, the actual production was taken as a basis to determine the real capacity. For three non-sampled producers, which did not submit any data on capacity and production, the data provided by RFPA were used.

(77) The Commission considers this a clear and coherent approach when establishing the total production capacity of Russian producers of the product concerned. Contrary to what was alleged, the same methodology was applied to all producers. If the actual production was higher than the reported name plate capacity, for example due to an update of production facilities, the Commission sees no reason why such additional capacity cannot factually be taken into account given that it is obvious that the nameplate capacity is not accurate. The argument that such methodology is not common in the market, as alleged, is not considered a reason to neglect the actual production data. Also, the way in which the capacity of the Union industry is calculated, as brought forward by RFPA, is irrelevant in the determination of the total production capacity of the Russian producers.

(78) Contrary to what was alleged by RFPA, the non-use of the reported nameplate capacities in some cases and their replacement with actual, mostly verified, production data does not mean that the Commission has applied the concept of best facts available in the sense of Article 18 of the basic Regulation. As regards the capacity, the Commission has made full use of the data provided by the Russian producers themselves, but applied a methodology to calculate the total production capacity, whereby not only the nameplate capacity but also the actual production and capacity was taken into account. This methodology was set out in the general disclosure document, and the result of the application

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of this methodology, per company and even per plant, was disclosed to the companies concerned. Accordingly, in the determination of the total production capacity, the Commission has only made use of data that were provided by Russian producers and RFPA. All relevant data were provided and there was no need to resort to other sources of data in this respect.

(79) In general, as regards the producers that were not inspected, the data on capacity and production reported by these producers in their replies were used. RFPA provided comments on the calculation of the capacity of certain companies and plants. It was argued that, regarding the producer UralChem Kirovo, the production volume in the RIP, as set out in the disclosure document, was not correct. The Commission accepted this point and used instead the production volume as mentioned in the submission after disclosure. The technical report on the capacity, provided during the plant visit, which was related to the maximum production of AN reached by the plant in question as was correctly pointed out by RFPA, was taken into consideration as well. Regarding the producer UralChem Berezniki, in the calculation of the capacity a number of 10 days for maintenance was used as reported by this company during the verification visit. Comments received after disclosure on additional stoppages were not substantiated and appeared to be based on data of another company. These comments were therefore rejected.

(80) Equally, comments regarding certain bottlenecks in the production process of other plants, were not substantiated, could not be verified and were therefore not taken into account either. Regarding one particular plant, the bottleneck appeared to relate to the production of nitric acid. However, even taking into account the alleged maximum production of nitric acid, it would still be possible to reach the capacity as established by the Commission, taking into account the fact that in order to produce one tonne of AN, less than one tonne of nitric acid is needed.

(81) As far as the increase of capacity after the RIP is concerned, it was argued by RFPA that the increase of capacity with regard to one producer which made an investment related to a new production line was overestimated. However, the Commission based the projected capacity on the English translation of a technical report with regard to this new production line, which was provided by the company during the verification visit at the company's premises, and therefore considered to be reliable.

(82) Acron argued that it does not have significant spare capacity, mainly due to difficulties with regard to access to raw materials. However, the investigation revealed that the raw materials were not only used to produce the product concerned but also many other products. In view of this widespread use and, accordingly, the possibility to easily shift the use of the raw materials to the production of the product concerned, such alleged difficulties were not considered as an element which would limit the total production capacity of the product concerned.

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(83) The use of the methodology described in the previous recitals has led the Commission to the conclusion that a significant over-capacity exists. The arguments brought forward by RFPA and Acron could not be substantiated and are rejected.

(84) The Commission considers that, if the current measures were to be removed, at least part of this spare capacity is likely to be used and directed to the Union markets for the following reasons.

(85) First, some of the potentially largest export markets for AN in the world (such as the United States of America and Australia) remain protected by anti-dumping measures from Russian exports. Moreover, the Chinese market continues to be closed to imports of AN. Therefore, Russian producers are unlikely or unable to export to those markets.

(86) On 22 May 2014 the US Department of Commerce published the preliminary results of an Antidumping Duty Administrative Review ([1]) proposing that Acron and EuroChem get zero duties for their exports of AN to the USA. However, even if this proposal were to be confirmed, the duties currently in force will still apply to all other exporting producers from Russia. In addition, pursuant to Section 751(a)(2) of the US Tariff Act of 1930, as amended (the Act) the removal of the duties for Acron and EuroChem will be applicable only for one year and will be then subject to another annual administrative review, which may, depending on the outcome of that review, reinstall the anti-dumping duties. Finally, the US market of AN used as a fertiliser has been decreasing in the last decade due to increasing security requirements and dealers' unwillingness to continue to handle AN ([2]). Moreover, due to the shale gas extraction, which started in the recent years, the US AN producers now have access to cheaper gas. Therefore, it is likely that Acron and EuroChem would face strong competition and may not be able to gain substantial market shares in the US.

(87) RFPA argued that the other main export destinations for Russian AN, such as Latin America (especially Brazil), Egypt and Turkey will grow significantly until 2017 in comparison with 2012. They quoted a report which projected an overall increase by 15 % of the demand for AN for Brazil, Egypt, Peru, Turkey, Ecuador and Colombia taken together. This increase equals to 749 000 tonnes (i.e. from 4,851 million tonnes 2012 to 5,6 million tonnes in 2017), that is an average increase by 149 800 tonnes per year. However, this is only 9,7 % of the estimated yearly spare capacity of the Russian producers. The applicant claims that the increased consumption in those countries would be partially taken over by future domestic production as the countries in question allegedly have a number of projects for building their own

([1]) http://enforcement.trade.gov/frn/summary/russia/2014-11886.txt
([2]) Inv. No 731-TA-856 (Second Review), http://www.usitc.gov/publications/701_731/Pub4249.pdf p 11.

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capacity in the production of AN or other nitrogen based fertilisers. Irrespective of whether those projects would indeed be realised and would take over at least partially the increase in consumption, the Commission considers that the projected consumption in the countries in question is at a level which would only allow for the partial absorption of the Russian producers' spare capacity.

(88) After disclosure, RFPA argued that the Commission did not take into account increases in consumption in other third country markets for Russian AN, notably in the former Soviet Union (FSU) region. However, in one of the main markets in that region, Ukraine, anti-dumping duties on imports of Russian AN are in place as well. In July 2014 the duties were extended for a period of five years and the level of the duties was raised significantly. So this market is closing down even further for imports of Russian AN.

(89) Furthermore, the price level in other markets, like for example in Kazakhstan, is such that it would be more attractive for Russian exporting producers to direct their exports to the Union. Also, these markets are much smaller than the Union market. For example, consumption in Kazakhstan is less than 4 % of the consumption in the Union.

(90) In addition, it was argued that the projected growth of other main export destinations was not correctly calculated. However, the data used were based on the independent report cited in recital 87. Even if these data would appear to be underestimated as alleged, the projected growth in demand can still easily be met by using only a part of the spare capacity of the Russian producers.

(91) Second, the domestic market is not likely to absorb the spare capacity. RFPA argued that, according to the same report, consumption in Russia also remains strong, is projected to increase in the future, and Russian producers will primarily try to satisfy the domestic market. RFPA repeated this argument after disclosure. However during the RIP domestic sales were 53 % of the total sales of the Russian producers and the projected increase by 3 % each year for the next 5 years (on average approximately 120 000 tonnes per year) could be easily covered by the spare capacity the Russian producers already have at their disposal. The projected yearly increase constitutes less than 7,8 % of the estimated yearly spare capacity of the Russian producers after the RIP. In addition, the future increase in consumption is only a forecast and may not happen or be at a slower pace as, according to the same report, there were significant fluctuations in the domestic consumption which occurred in the past five years in comparison with the Union or third countries' consumption ([1]).

([1]) For example between 2008 and 2009 during the financial crisis the consumption in Russia dropped by 33 % while in the EU the drop was only around 6 %, while in Brazil, for example, there was actually an increase by around 28 %.

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(92) Third, the Union remains the most important AN market in the world, as it accounts for around 18 % of global consumption. Its geographical proximity to Russia as well as the fact that some of the Russian exporters have well-established distribution channels in the Union facilitates logistically the exports.

(93) Following disclosure, RFPA claimed that alleged technical barriers to trade for entry of Russian AN into the Union should be considered, namely the ban on sales (in Germany) or strict regulation on storage of AN in certain other Member States. However, contrary to RFPA's claims, those limitations apply to both exporters from third countries and Union producers in a non-discriminatory way and do not disproportionately affect imports. In addition, those limitations have not had an impact on the overall attractiveness of the Union market as it remains among the biggest ones in the world in terms of consumption. Therefore the Commission rejects this claim.

(94) The Commission therefore concludes that the Russian producers dispose of significant spare capacity which is very likely to be used for substantial additional exports to the Union, should the measures lapse.

3.3.3. *Incentives to redirect sales volumes to the Union*

(95) The price level in the Union is currently much higher than in major third countries currently supplied by Russia and in the Russian domestic market. During the RIP the average ex-works export price (201 EUR/tonne) to third countries and the average ex-works domestic price (221 EUR/tonne) of the four sampled exporting producers were respectively 34 % and 27 % lower than the average ex-works price of the sampled Union producers (303 EUR/tonne) (see Table 7) and also lower than the average ex-works price of imports from Russia to the Union (see Table 2) and from third countries to the Union (see Table 3).

(96) Should measures be repealed, Union prices are likely to fall as a result of increasing supply of lower priced imports. However, in view of the important gap between the export prices of Russian exporting producers to third countries and the prices charged during the RIP on the Union market by Russian exporting producers, exporting producers from third countries and Union producers, it appears unlikely that prices charged on the Union market will fall to the level currently observed on third country markets to which the Russian producers export. The exporting producers are therefore likely to strive to achieve a higher profit

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margin by selling to the Union. As a result, the exporting producers are likely to have an incentive to redirect part of their current export volumes to third countries (amounting to approximately 3,4 million tonnes in the RIP equivalent to more than 50 % of Union consumption) to the Union ([1]).

3.4. **Conclusion**

(97) In view of the considerations set out in Section 3.3, the Commission concludes that there is likelihood of recurrence of dumping and of a substantial increase of the quantities exported to the Union, should the measures in force lapse.

4. **DEFINITION OF THE UNION INDUSTRY**

(98) The Union industry was defined as the known producers of AN in the Union during the period considered.

(99) As indicated in recital 19, a sample consisting of four companies was selected. All sampled Union producers cooperated, sent questionnaire replies within the deadlines and were visited during the investigation. In addition, Fertilisers Europe provided additional data concerning capacity, production and sales of the non-sampled cooperating producers and estimates for the remaining producers. When possible, the Commission cross checked those data with data supplied by other interested parties and/or publicly available data.

(100) Following disclosure, RFPA claimed that the sample chosen by the Commission was not representative of the Union industry. The claim is based on the allegation that the same economic indicators (notably profitability) differ between the sampled companies and the Union industry overall.

(101) This claim cannot be accepted. The four sampled companies were selected objectively on the basis of their volume of production and sales of the product concerned in the Union as provided under Article 17(1) of the basic Regulation. The purpose of sampling is to allow the Commission services to carry out a detailed investigation of some of the injury factors for a representative part of the Union industry in the time available. The fact that some injury indicators might differ between the sampled companies and the total Union industry does not render the sample unrepresentative. Given that the data of the sampled producers have been verified on-the-spot at the premises of the companies concerned, this is considered to be reliable data. In any event, as mentioned in recital 145, the Union industry was found not to be in an injurious situation during the RIP.

(102) In addition, RFPA claimed that some of the sampled companies failed to cooperate with the Commission by not providing certain data or providing only partial and incorrect data. As a consequence, RFPA requested that those data should not be

([1]) For similar a conclusion reached see for example Council Regulation (EC) No 1683/2004 of 24 September 2004 (glyphosate — China), OJ L 303, 30.9.2004, p. 1, recital 41; Council Implementing Regulation (EU) No 512/2010 (ammonium nitrate — Ukraine), OJ L 150, 16.6.2010, p. 24, recitals 41 - 43.

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relied upon to draw conclusions on the state of the Union industry and that adverse inferences should be drawn from the lack of cooperation by the Union industry, or the indicators for the entire Union industry, should be used instead.

(103) This claim cannot be accepted. The Commission is satisfied with the data provided by the sampled companies, which has been verified on-the-spot at the premises of the companies concerned and forms a reliable part of the assessment of the situation of the Union industry.

5. SITUATION ON THE UNION MARKET

5.1. Union consumption

(104) The Commission established the apparent Union consumption on the basis of: (i) the volume of sales of the Union industry on the Union market based on data provided by the applicant; and (ii) imports from third countries based on data extracted from the Article 14(6) database ([1]).

(105) Union consumption developed as follows:

Table 1

Union consumption (metric tonnes)

	2010	2011	2012	RIP
Total Union consumption	7 174 863	6 674 500	6 698 722	6 356 761
Index (2010 = 100)	*100*	*93*	*93*	*89*

Source: Data provided by the applicant, verified data and Article 14(6) database data

(106) Between 2010 and the RIP, the Union consumption of AN decreased by 11 %, notwithstanding the fact that the production of agricultural product did not decrease correspondingly. There are three main reasons for such a decrease. First of all, spreading equipment and techniques have improved and as a consequence a lesser quantity of fertilisers is needed per square metre of land. Second, the decrease in AN consumption is compensated by the use of other fertilisers such as calcium ammonium nitrate or compound fertilisers. Third, safety concerns and strict rules about production and storage of ammonium nitrate discourage the use of this product.

(107) Following disclosure, RFPA requested additional information on the sources of the data on consumption disclosed by the Commission and a hearing took place chaired by the Hearing Officer on 26 June 2014. Subsequently, RFPA claimed that the

([1]) Monthly import statistics based on actual data that is provided by customs authorities in Member States under Article 14(6) of the basic Regulation on products subject to anti-dumping measures.

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data provided by the applicant had been submitted at too late a stage of the proceeding, were unverified and incoherent with data provided previously by the applicant. In addition, RFPA claimed that those data most probably did not include data on technical ammonium nitrate and on mixtures of ammonium nitrates with other fertilising or not-fertilising substances, since they differed from similar data available to the applicant and provided to its members. Therefore, they should be disregarded and best facts available should be used instead.

(108) This claim is rejected. The Commission made use of the data provided by the applicant for the EU sales and cross-checked those data with the verified data of the sampled producers. To those figures, imports data were added to establish the consumption in the Union. It is therefore considered that this data are reliable.

(109) RFPA also claimed that the basis for the Commission's calculation of the total Union consumption is understated, and that, on the basis of a report published by an independent market analyst, consumption is increasing rather than decreasing. More specifically, the data taken from this report concerning the Union FGAN and EGAN (explosive grade ammonium nitrate) demand for 2010 match the Commission data in the region of 7,1 million tonnes, but the former data increase rather than decrease over the following years.

(110) This claim is unfounded since the Commission made use of actual data provided by the applicant which were partly verified plus available statistical data and considers this data as reliable.

5.2. **Volume, prices and market share of imports from Russia**

(111) The volumes, market shares and average prices of the imports from Russia of the product concerned developed as set out below:

Table 2

Import volume (metric tonnes), market share and prices

	2010	2011	2012	RIP
Volume of imports (tonnes)	164 658	134 060	200 542	199 604
Index	*100*	*81*	*122*	*121*
Market share	2,3 %	2 %	3 %	3,1 %
Index	*100*	*88*	*130*	*137*
Average CIF price (EUR/tonne)	201	258	262	264
Index	*100*	*128*	*130*	*131*

Source: Article 14(6) database

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(112) The volume of imports from Russia increased by more than 20 % over the period considered. Their market share increased by more than 30 % from 2,3 % in 2010 to 3,1 % in the RIP. CIF prices evolved from 201 to 264 EUR/tonne during the period considered. By comparing the average Russian CIF export prices to the Union with the average ex-works prices of the Union producers during the RIP, it appears that the Russian prices are undercutting the Union prices. The average ex-work sales price of the sampled Union producers to unrelated customers in the Union during the RIP was EUR 303 per tonne. However, as indicated in Section 3, almost all exporting producers which sold the product concerned during the RIP had price undertakings and their export prices to the EU were determined by those price undertakings which set minimum import prices. Consequently, such export prices cannot be considered as a reliable indicator in order to carry out a reliable and meaningful undercutting calculation.

(113) Following disclosure, RFPA commented that the Commission's price undercutting and underselling calculations are incorrect, as they require multiple adjustments (for ordinary customs duties, post-importation costs, differences in the product, packaging, and the level of trade). RFPA also commented that compared to a previous expiry review in 2002, there was a change in methodology regarding the use of adjustments. RFPA further suggested that the export sales prices to the Union of a Russian producer which is not benefitting from an undertaking as well as the export prices of a Russian producer exempted from anti-dumping duties should be used for the purpose of undercutting calculation.

(114) In this regard it suffices to recall that the Commission did not carry out any undercutting and underselling calculations for the reasons referred to in recital 112. Therefore these claims are unfounded.

5.3. **Volume, prices and market share of imports from other third countries**

(115) 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

Import volume (metric tonnes), market share and prices

		2010	2011	2012	RIP
Other third countries	Volume in tonnes	348 100	312 043	295 139	285 962
	Index	*100*	*90*	*85*	*82*
	Market share	4,85 %	4,68 %	4,41 %	4,50 %
	Index	*100*	*96*	*91*	*93*

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		2010	2011	2012	RIP
	Average price (CIF)	201	270	279	275
	Index	*100*	*134*	*139*	*137*

Source: Eurostat

(116) AN is imported mainly from Ukraine, Georgia and Serbia. Anti-dumping measures in force against imports of AN from Ukraine expired in 2012. The total volume of imports originating in third countries other than Russia decreased; their market share remained broadly stable over the period considered, and above the market share of Russian imports. This can be explained by the decrease in consumption over the same period The overall average prices of imports from other countries increased in line with the same trend for Russian prices and Union prices.

5.4. **Economic situation of the Union industry**

(117) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.

(118) For the purpose of the injury analysis, the economic situation of the Union industry is assessed on the basis of macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, and recovery from past dumping) and microeconomic indicators (average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital). The former are based on data provided by the applicant in the initial request for a review and in subsequent submissions and from statistics and relate to all known Union producers. The latter are based on data contained in the questionnaire replies from the sampled Union producers and verified during the investigation.

5.4.1. *Production, production capacity and capacity utilisation*

(119) The current expiry review has confirmed the findings of the previous investigations that gathering accurate and reliable data on capacity and production of the product concerned is a complex exercise. The solid fertiliser is obtained in the particulation plant (prilling tower) after the production of the melt/liquor ammonium nitrate via a chemical synthesis process. The melt/liquor can be used to produce the solid product but also other downstream products, such as calcium ammonium nitrate. In addition, the solid product can be used as fertilisers but also for industrial purposes. Statistical distortions can occur due to the existence of multi-purpose plants that can switch quickly

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production to or from other fertilisers. A low capacity utilisation rate for the product concerned is therefore a less meaningful indicator of the overall economic situation of the Union industry.

(120) Bearing in mind these caveats, the total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

Production, production capacity and capacity utilisation

	2010	2011	2012	RIP
Production volume (in tonnes)	6 963 753	6 877 806	7 143 611	6 911 630
Index	*100*	*99*	*103*	*99*
Production capacity (in tonnes)	15 132 238	15 292 512	15 499 487	15 475 487
Index	*100*	*101*	*102*	*102*
Capacity utilisation	46 %	45 %	46 %	45 %
Index	*100*	*98*	*100*	*98*

Source: Information from the applicant, sampling questionnaire replies and verified questionnaire replies

(121) The Union industry's production of the product concerned remained relatively stable between 2010 and the RIP, in the region of 7 million tonnes.

(122) The production capacity also remained broadly stable throughout the period. The production capacity reported by the Union industry takes into account the total AN production capacity, not only for the product concerned but also other products. Indeed, the actual AN capacity utilisation is considerably higher when these other products are taken into account. For instance, on the basis of the verified data of the sampled Union producers, the capacity utilisation during the period considered was around 20 percentage points higher (from 72 % in 2010 to 68 % during the RIP).

5.4.2. *Sales volume, market share and growth*

(123) The Sales volumes of the Union industry on the Union market to unrelated customers and the market share developed over the period considered as follows:

Table 5

Sales volume and market share

	2010	2011	2012	RIP
Sales volume on the Union market (in tonnes)	6 662 106	6 228 396	6 203 041	5 871 195
Index	*100*	*93*	*93*	*88*

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	2010	2011	2012	RIP
Market share	92,9 %	93,3 %	92,6 %	92,4 %
Index	*100*	*100*	*100*	*99*

Source: Information from the applicant, sampling questionnaire replies and verified questionnaire replies

(124) The sales volumes on the Union market to unrelated customers decreased by 12 % during the RIP compared to volumes sold in 2010. This development is in line with the general trend of decreasing consumption on the Union market, for the reasons explained in recital 106.

(125) Since both sales and consumption decreased during the period considered, the market share of the Union industry remained broadly stable and therefore the Union industry experienced no growth.

5.4.3. *Employment and productivity*

(126) Based on verified data of the four sampled Union producers, employment and productivity developed over the period considered as follows:

Table 6

Employment and productivity

	2010	2011	2012	RIP
Number of employees	1 253	1 110	1 128	1 105
Index	*100*	*89*	*90*	*88*
Productivity (unit/ employee)	2 390	2 616	2 648	2 579
Index	*100*	*109*	*110*	*107*

Source: Verified questionnaire replies

(127) During the period considered the number of employees in the four sampled companies decreased (by 12 % comparing 2010 and the RIP). As this decrease was higher than the production decrease, the productivity of the sampled Union producers' work-force, measured as output (tonnes) per person employed per year, increased by 7 % between 2010 and the RIP.

5.4.4. *Magnitude of the dumping margin and recovery from past dumping*

(128) As mentioned in recital 52, the Commission did not establish the current magnitude of dumping margins as the Russian import prices were based on minimum price undertakings and therefore unreliable for carrying out a meaningful assessment of whether dumping would be likely to continue or recur should anti-dumping measures be allowed to lapse.

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(129) As demonstrated by current profit margins (Table 10) and high market share (Table 5) the Union industry has recovered from past dumping practices.

5.4.5. *Sales prices and factors affecting domestic prices*

(130) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

Sales prices in the Union

	2010	2011	2012	RIP
Average ex-works unit selling price in the Union (EUR/tonne)	204	291	305	303
Index	*100*	*143*	*149*	*149*
Unit cost of production (EUR/tonne)	180-195 (*)	200	216	225
Index		*100*	*108*	*113*

Source: Verified data of the sampled companies
(*) Cost of production for 2010 given in a range as it does not cover the full sample.

(131) The sampled Union producers' average net sales price increased substantially between 2010 and 2012, but decreased slightly during the RIP.

(132) The average costs of production increased, too, mainly due to the increase in the costs of gas which is the major input.

5.4.6. *Labour costs*

(133) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 8

Average labour costs per employee

	2010	2011	2012	RIP
Average wages per employee (EUR)	31 909	37 764	40 938	41 736
Index	*100*	*118*	*128*	*131*

Source: Verified data of the sampled companies

(134) The average labour costs per employee had an increasing trend during the period considered. The most significant increase occurred between 2010 and 2011, while between 2012 and the RIP it consisted of 3 percentage points.

5.4.7. *Inventories*

(135) Stock levels of the sampled Union producers developed over the period considered as follows:

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Table 9

Inventories

	2010	2011	2012	RIP
Closing stocks (in tonnes)	108 300	151 562	195 351	97 092
Index	*100*	*140*	*180*	*90*
Closing stocks as a percentage of production	1,56 %	2,20 %	2,73 %	1,40 %
Index	*100*	*142*	*176*	*90*

Source: Verified data of the sampled companies

(136) The closing stock first increased significantly in 2011 and 2012 compared to 2010 and then, decreased by 10 % in the RIP compared to 2010. Compared to the level of production, the closing stock followed the same trends from 2010 to the RIP.

5.4.8. *Profitability, cash flow, investments, return on investments and ability to raise capital*

(137) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 10

Profitability, cash flow, investments and return on investments

	2010	2011	2012	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	11,7 %	20,8 %	17,6 %	14,4 %
Index	*100*	*178*	*150*	*123*
Cash flow (EUR)	95 605 038	196 626 207	182 421 560	173 543 772
Index	*100*	*195*	*191*	*182*
Investments (EUR)	35 761 804	31 532 218	28 032 159	34 502 327
Index	*100*	*88*	*78*	*96*
Return on investments	28,1 %	61 %	53,3 %	44,7 %
Index	*100*	*217*	*190*	*159*

Source: Verified data of the sampled companies

(138) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(139) During the period considered the profitability of the sampled Union producers developed from 11,7 % in 2010 to 14,4 % in the RIP. In this respect, the applicant claimed the target profit for the analysis should take into account the need for such a highly

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capital intensive industry to achieve a satisfactory return on capital employed (ROCE) as expected by investors. This claim could not be accepted because the target profit for the analysis must be limited to the profit which the Union industry could expect to achieve in normal conditions of competition, in the absence of dumped imports.

(140) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow has increased between 2010 and the RIP by 82 %, although in the RIP it was slightly lower than in 2011 and 2012 (respectively, 13 and 5 percentage points lower).

(141) The investments followed a decreasing trend. The decrease was more significant in 2011 and 2012, but amounted only to minus 4 % during the RIP compared to 2010. Investments were mainly linked to ensure compliance with more and more stringent environmental requirements.

(142) The return on investments is the profit in percentage of the net book value of investments. It followed broadly the profitability trend over the whole period considered.

(143) The investigation did not reveal any difficulties encountered by the sampled Union producers in raising capital.

5.5. **Conclusion on the situation of the Union industry**

(144) The Regulation (EC) No 661/2008 concluded that the economic situation of the Union industry was non-injurious and that the existence of anti-dumping measures on the imports of the product concerned from Russia was the main reason for such a positive situation.

(145) The findings of the present expiry review confirm the conclusions reached in the previous investigation. Between 2010 and the RIP, the economic indicators were equally positive. The Union consumption decreased and the imports from Russia increased, but the Union industry managed to maintain a significant market share and to further increase their profitability although profits in 2012 and the RIP were lower than in 2011, thus indicating a declining trend. The costs of production increased, mainly due to the increase in gas prices (the main raw material for the production of the product concerned), but the sales prices increased also and allowed the Union industry to achieve a healthy level of profitability.

(146) As explained in recitals 119 and following, data on capacity utilisation cannot be relied upon to draw decisive conclusions regarding the state of the Union industry, and all in all it can be concluded that overall the Union industry is in a healthy state, not suffering from injury from the Russian exports of AN due to the existence of the anti-dumping measures.

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(147) Following disclosure, RFPA, and the representatives of the Russian authorities, argued that the Union industry's positive state, including its exports to third countries, supports a finding of no recurrence of material injury. The Commission considers however that the current positive economic situation of the Union industry, including its volume of export sales to third countries, does not automatically preclude that the situation may change in the future if the measures in force are allowed to lapse.

6. LIKELIHOOD OF RECURRENCE OF INJURY

(148) To assess the likelihood of recurrence of injury if the measures currently in force were allowed to lapse, the potential impact of the Russian exports to the Union market and on the Union industry were analysed, pursuant to Article 11(2) of the basic Regulation.

(149) The analysis focused on the consumption trends of the Union market, spare capacity, trade flows, the attractiveness of the Union market, and pricing behaviour of the Russian producers.

6.1. Consumption in the Union

(150) The consumption of the product concerned in the Union has decreased by 11 % in the RIP compared to previous years. This reduction in the consumption of the product concerned is driven by use of other fertilisers, more efficient use of AN by farmers and safety and security concerns. The Union industry therefore competes with Russian products in a shrinking market. In turn, this is likely to exert a downward pressure on prices.

(151) Following disclosure, and as mentioned in recital 109, RFPA disagreed with the finding that the consumption of the product concerned in the EU will decrease in the future. However, the report referred to by RFPA suggests a marginal recovery of nitrogen fertilisers' demand, and not necessarily an increase of consumption of the product concerned. The more and more stringent environmental and safety requirements that apply to the storage and use of ammonium nitrate, together with the level of maturity reached by certain markets and the more and more effective spreading techniques indicate that, even in case of an increase in fertiliser consumption, and particularly of nitrogen fertiliser consumption, the consumption of the product concerned will not increase in the foreseeable future. Therefore, this claim is rejected.

6.2. Spare capacity, trade flows, attractiveness of the Union market, and pricing behaviour

(152) The Commission established during the RIP Russian spare capacity which amounts to more than 16,9 % of the entire Union consumption of the product concerned (see recitals 73 to 74). That capacity has been further increased after the RIP and is now estimated to be around 24,3 % of Union consumption.

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(153) This spare capacity would, in the absence of measures, be in all likelihood utilised to produce substantial additional quantities of AN for export to the Union. Russian producers already export half of their production to third countries. Domestic consumption in Russia is only expected to increase in the future by 3 % on a yearly basis. Russian export prices to third country markets are substantially lower than present Union prices. If prices on the Union market were to remain at a level substantially above prices on those third country markets once measures lapse, Russian producers will have a strong incentive not only to use their spare capacity for the Union market, but also to redirect some of their current exports to third countries to the Union market.

(154) In addition, there are limits to additional Russian exports to third countries. Some of the potentially largest exports markets for AN (China, USA and Australia) are inaccessible to Russian exports (see recital 85). The possible setting of zero duties for two Russian producers in the USA for one year (see recital 86) is unlikely to lead to significant shift of Russian exports to the USA, as domestic gas prices in the USA have declined and are expected to remain at a low level due to the increasing exploration of shale gas and existing export restrictions for shale gas, which keep the domestic gas price in the USA low (see also recital 86). China's market also continues to be closed to imports of AN. The consumption of AN in the current Russian export markets (mainly Latin America and notably Brazil) is expected to grow, but the current Russian spare capacity is more than twice the predicted increase in consumption in those markets, and it is unlikely that this expected extra consumption will be taken over (solely) by Russian producers. A number of traditional Russian export markets such as Egypt, Turkey, Peru and Brazil, are also building their own capacity for the production of AN or other nitrogen-based fertilisers (see recital 87).

(155) In any event, the Union market is more attractive than Latin America due to the geographical proximity and the existence of well-established distribution channels. Indeed, substantially lower freight costs provide higher profit to the Russian exporters which, given the choice, will prefer selling to the Union, provided that price levels in the Union remain higher than in third countries.

(156) The Commission established the non-injurious price during the RIP for the Union industry by adding to the cost of production (established based on the verified data of the sampled Union producers set out in Table 7), plus SG&A and the target profit.

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(157) Based on the verified data of the four sampled Union producers, SG&A is between 5 % and 8 % of production costs and the target profit for this industry is 8 % as established in a previous investigation ([1]).

(158) On the basis of those figures, during the RIP the non-injurious price for the Union industry ranges between 257 EUR/tonne and 264 EUR/tonne.

(159) The Commission notes that one of the two Russian exporting producers subject to a price undertaking during the RIP sold the product concerned at a price above the minimum import price under the undertaking. On the other hand, the second exporting producer — who was subject to the undertaking only for a limited period of time during the RIP — sold below the minimum import price. In these circumstances, it is unclear how they would set their prices if the undertakings lapse together with the anti-dumping duties. It is also noted that the quantities involved for these two exporting producers were not significant in the RIP. Furthermore, it has to be borne in mind that the other Russian producers are likely to re-enter the EU market in the absence of measures which will increase the competitive price pressure on the market including on the two exporting producers for whom undertakings were in place in the RIP.

(160) One of the decisive elements for assessing the likelihood of recurrence of injury is at what prices those additional exports from companies not subject to a price undertaking are likely to take place. During the RIP, Russian export prices to third countries were on average 201 EUR/tonne or 34 % lower than the current average price at which Union producers sell in the Union. Those Russian export prices are, as stated in recital 58, at a sustainable level. It is likely that Russian exports from companies not subject to a price undertaking, in the absence of anti-dumping measures, would enter the Union market at an average price level below that of the import prices from third countries and also below that of imports from Russia under the undertaking, which are at the higher end of the non-injurious target price of the Union industry. Otherwise, they would not be able to gain additional market share. As the current price level of Russian imports currently under the price undertaking for one of the exporting producers corresponds to the upper end of the non-injurious price level, the Commission, on the basis of the information currently at its disposal, considers that it is likely that those additional imports will take place at an injurious level. Notwithstanding the current profit level of the Union industry, such likely prices would put at risk the Union industry's ability to achieve the normal profit that it could expect to achieve in the absence of dumped imports.

([1]) Council Regulation (EC) No 658/2002, recitals 97-98 (OJ L 102, 18.4.2002, p. 1).

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(161) Following disclosure, RPFA claimed that the comparison between Russian export prices to third countries and the Union prices is meaningless, since a comparison should be made between sales to the same markets and with proper adjustments for duties, level of trade, etc.

(162) This claim cannot be accepted. The Commission is not asserting that, should measures be allowed to lapse, Russian exports would undercut Union prices by 34 %. The Commission considers that it is likely that the price levels at which Russian exports will enter the Union in the absence of measures would be below the Union cost of manufacturing plus a reasonable profit margin and therefore be injurious. Those price levels would still be more attractive for the Russian exporters than the current level of sale prices to third markets. Thus, a diversion from current trade flows is likely to happen.

(163) The investigation has also demonstrated that the current cost of production, and therefore the current non-injurious price is unlikely to decrease in the short term, given the trend of increased cost of production during the period considered (see Table 7). Indeed, the investigation did not bring to light any indications that this trend would be likely to change.

(164) Following disclosure, RFPA stressed that the day before disclosure they had provided information about declining gas costs in the Union. RFPA mentioned in particular data provided by a leading fertiliser market publication which reported the EU hub prices at the Dutch gas market prices 'Title Transfer Facility' (TTF) rather than non-representative Waidhaus prices. RFPA also quoted the US prices of gas and the Yara international first quarter 2014 report to its investors, where it is mentioned that the company is experiencing significantly lower gas costs.

(165) The Commission notes that in the economic study submitted by some farmers' associations (see below Section 7 on Union interest) the following is stated: '(n)atural gas prices in the Union are higher than in the majority of other regions, and are expected to rise in the foreseeable future'. As regards the decrease in the costs of gas announced by Yara international, this is a case apart because the Yara group is a multinational group with access to several sources of cheap gas outside the Union. Other producers of the product concerned, and notably those located in the Eastern regions of the Union, rely on Russian gas. Therefore, the Commission still considers that there is no convincing evidence that the gas prices for the Union producers will significantly decrease in the near future.

6.3. **Impact of the projected volume of imports and price effects in case of repeal of measures**

(166) Since Russian AN would be exported to the Union market in significant volumes and at an injurious price level, the Union producers would be forced to reduce their own prices to

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maintain sales volumes and market shares. Indeed, AN is a commodity type of product where the competition among various producers is predominantly based on price.

(167) Following disclosure, RFPA claimed that alleged technical barriers to trade for entry of Russian AN into the Union should be considered, namely the ban on sales (in Germany) or strict regulation on storage of AN in certain other Member States. In so far as those limitations apply to both exporters from third countries and Union producers in a non-discriminatory way, the Commission considers that this claim should be rejected.

6.4. **Conclusions**

(168) In view of the findings of the investigations, the spare capacity associated with modest consumption growth in Russia, the limited ability to increase exports to third countries and the attractiveness of the Union market, it is considered that the repeal of the measures is likely to result in a recurrence of dumped imports from Russia.

(169) The investigation has also shown that the Union industry is currently in a non-injurious situation. However, there are no indications that this positive situation will be sustainable if measures were allowed to lapse. On the contrary, according to market analysis provided by the applicant the AN market prices have now reached their peak and the top of the business cycle. The business cycle, as well as prices, are now projected to decline. More specifically, after having risen steadily every year since 2009, prices appear now to go down. Therefore the level of price and profit achieved by the Union industry during the period considered will not be obtained in the foreseeable future. At the same time, the costs of production will remain stable or further increase thus squeezing the profit margin of the Union industry. In this scenario, and given the decreasing consumption in the Union, a surge of imports in significant quantities at undercutting prices will exert a strong pressure on the industry's sales prices and cause it to lose significant market share. This will in all likelihood unavoidably cause material injury to recur.

(170) Following disclosure, RFPA criticised the Commission's reliance on the market analysis provided by the applicant and noted that the anticipated price levels in 2017-2018 will be similar to the prices in 2010 and higher than the prices in the years before. RFPA also noted that in 2010 the average profitability of the Union industry was above the target profit (at 12,8 %) and that Yara International's quarterly report for 2014 which depicts a promising outlook.

(171) The prospective nature of an expiry review makes it difficult to draw exact conclusions on projections about price levels in 2017 and beyond. Independent market analysis indicates however that the price levels of the product concerned are expected to decrease in the next two years. This, together with the expected increase in

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costs of production, will in all likelihood reduce the profit currently achieved by the Union industry. This prospective conclusion remains valid notwithstanding the fact that during the RIP and the period considered the level of profits achieved by the Union industry was higher than the target profit of 8 % as established in a previous investigation. In this respect, the fact that the expiry review terminating the antidumping measures on imports of Urea from Russia did not find any likelihood of recurrence of injury is not relevant, since each case should be assessed on its own merits and specificities. Moreover, Yara International's first quarter 2014 presentation to its investors does not target specifically the product concerned and should not be considered as a proxy for the expectations of the Union industry of the product concerned. Therefore, this claim is rejected.

(172) Representatives of the Russian authorities and RFPA claimed that the Commission failed to provide positive evidence to support the conclusion that should measures in force be allowed to lapse, there will be recurrence of dumped imports of the product concerned, which will cause recurrence of injury to the Union industry.

(173) RFPA also claimed that the Commission had not established a causal link between the termination of measures and the likelihood of recurrence of injury. On the contrary, the external elements mentioned in the disclosure document (declining consumption, declining prices, increasing costs of production, low capacity utilisation rate) seem to be the cause of the likely recurrence of injury.

(174) The Commission disagrees with this assessment. The likelihood of recurrence of injury should measures be allowed to lapse is justified mainly by the likely recurrence of dumped exports from Russia at significant volumes and at a price level which, while still being profitable for the Russian exporters, will be lower than the Union prices. By mentioning some external factors in its overall assessment, the Commission merely identified other factors which may have an impact on the Union market in the coming years and hence on the situation of the Union industry but it does not render invalid the conclusion that injurious dumping is likely to recur if measures are allowed to lapse.

7. UNION INTEREST

(175) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against Russia would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

(176) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

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(177) In the original investigation the imposition of measures was considered not to be against the interest of the Union. As this investigation is a review and measures have been in place since 1995 the analysis thereby allows the assessment of any undue negative impact on the parties concerned by the anti-dumping measures in place.

(178) On this basis it was examined whether, despite the conclusions on the likelihood of recurrence of dumping and likelihood of recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

7.1. **Interest of the Union industry**

(179) The existing measures have contributed to a big reduction in dumped imports from Russia and offered relief to the Union industry. The Union industry was found to be in a healthy economic situation mainly demonstrated by continuing profits. However, it is important to note that some Union producers already show profits significantly lower than the average profit achieved by the Union industry and even lower than the target profit of 8 %.

(180) If measures were allowed to lapse, the Union industry will in all likelihood be faced with increased unfair competition from the Russian producers. The termination of measures would undoubtedly lead to a quick deterioration of their economic situation. Terminating measures is therefore not in the interest of the Union industry.

7.2. **Interest of importers**

(181) In the previous investigation it was found that the impact of the imposition of measures was not likely to have a serious negative effect on the situation of importers and users in the Union. EFIA made itself known as an interested party and requested that measures be allowed to expire for a number of reasons, as follows:

— measures have been in place for almost 20 years and have achieved the desired effect of protecting the Union producers,

— due to increasing domestic consumption in Russia, there is no risk that Russian products will be re-directed to the Union,

— it is in the interest of the users to have access to various supply sources to increase choice.

(182) These claims should be rejected. It is true that the Union industry is currently not suffering any material injury. However in an expiry review the question to be answered is what would happen in the future if measures were allowed to lapse. In this respect, the current performance of the Union industry can only be used as a decisive indication of what could happen in the future to the extent that it allows assessing the level of the non-injurious price.

(183) Importers and traders in the Union have access to a number of sources inside and outside the Union, including Russia. Russia is the only country against which measures are in force.

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7.3. **Interest of users**

(184) Several users' associations made themselves known. Some of these however simply requested to be acknowledged as interested parties and did not take a specific stance on the Union interest. Two national associations expressed the views that after having been in force for so many years, it was no longer in their interest to maintain the existing measures.

(185) The reasons mentioned were:

— the large impact of fertilisers on the farmers' costs of production (between 7 % and up to 42 % of their variable costs, depending on the type of crops),

— the possibility to purchase fertilisers at a price which is around EUR 15 to EUR 20 cheaper than the price charged by the Union producers,

— the possibility to have access to a slightly different product (Russian prills are said to be slightly smaller than Union prills and thus adequate for use in certain production), and

— the possibility to have access to several suppliers, thus increasing competition and avoiding oligopolistic positions and price fixing.

(186) These claims cannot be accepted for the same reasons referred to in recitals 182 and 183. The Commission is not aware of any non-competitive practice among the Union producers, which compete freely on the Union market.

(187) No farmers replied to the users' questionnaire. Therefore, the exact impact of fertilisers as a whole, and of AN, in particular, on the farmers' costs of production could not be verified. Thus, the alleged high positive impact of lower prices of AN on the farmers' costs of production could not be confirmed. However, on the basis of the information at the Commission's disposal, AN constitutes only approximately 21 % of the total Union consumption of all nitrogen-containing fertilisers (ammonium nitrate, calcium ammonium nitrate, urea, urea AN solution, NPK/NP/NK, etc.) ([1]). Given that there are also other fertilisers (containing higher levels of potassium and phosphate), the share of AN in all fertilisers used by Union farmers is estimated to be even less than 21 %. Consequently, it is reasonable to conclude that the impact of the current measures in force on Union farmers as a whole is not significant.

(188) In addition, even if in the very short term access to cheaper fertilisers could appear to be in the interest of farmers, in the short/medium term there is a likelihood of recurrence of injury to the Union industry with a risk that some of the more vulnerable Union producers located in certain regions in the Union might go out of business. Hence, in the future there would be even less choice of suppliers for users/farmers, who may become dependent on Russian exports, which in such scenario would be likely to increase prices.

([1]) *Source:* http://www.fertilizerseurope.com/fileadmin/user_upload/publications/statistics_publications/Stat_website.pdf

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(189) One users' association submitted a study made by an independent economic consultant according to which the termination of the measures in force would result in a decrease in the price of fertilisers in the Union for the benefit of the users, a limited increase in import volumes, and a slight negative impact for the Union producers which however would be compensated by the solid profit margins that they are enjoying currently. However, it should be noted that some of the assumptions on which the assessment of the economic study referred to do not correspond to the findings of the investigation. The investigation established that the export price of AN from Russia to third countries is lower than the price estimated in that economic study. Similarly, the established Russian capacity and the potential domestic consumption values are different from those used for the simulations of the impact of the removal of the measures. Hence, the assessment made in the study cannot be fully relied upon to draw decisive conclusions.

(190) Following disclosure, a number of associations of farmers requested a hearing with the Commission and submitted a slightly revised version of the study referred to in the previous recital, which takes into account data provided by the Commission in the disclosure document.

(191) The revised study seems to confirm the Commission's assumption that the Russian export price would decrease to a level in the region of the Russian domestic prices, which is EUR 221 per tonne. This will force the Union producers to decrease their prices in order not to lose market shares.

(192) The farmers' representatives explained the difficult situation in which they are, whereby they compete with third countries' producers of agricultural products without any anti-dumping duty to protect them, contrary to the Union producers of the product concerned. They expect that if measures are allowed to lapse the price of the product concerned would decrease and the negative consequences for the Union producers would be counterbalanced by the benefits for the farmers, a category of users which employs millions of people in the Union. The farmers' representatives also mentioned that if the price of the product concerned would decrease, they would buy the product concerned rather than other less expensive, but more polluting fertilisers such as urea or solutions of urea and ammonium nitrate. This would be beneficial for the environment. They suggested that if measures are maintained, they should be suspended (similar to what happened in a different investigation on imports of silico-manganese from China, Kazakhstan and Ukraine ([1])).

(193) The Commission considered carefully the arguments put forward by the farmers' associations. It is undisputed that Union farmers have access to the product concerned manufactured by Union producers and by third countries' producers other than Russian exporting producers. But above all, as confirmed during the hearing held on 19 June 2014, and contrary to the assumption made in the economic study, there is no guarantee that any initial potential price decrease of the product concerned (were measures in force be allowed to lapse) would be passed onto the final users. Very often, when farmers purchase the product concerned, they buy it from distributors and are not even aware of its origin,

([1]) OJ L 317, 5.12.2007, p. 5.

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as long as it satisfies their requirement (in terms of the size of the prills or granules etc.). Therefore, if measures were allowed to lapse, it is highly likely that injury would reoccur for the Union producers of the product concerned, but there is no guarantee that the users would benefit at all.

(194) Anti-dumping measures on imports of the product concerned have been in force for many years without disproportionate costs to the farmers which could have jeopardised their existence. When analysing the Union interest, the proportionality of maintaining measures is assessed, taking into account the various and sometimes conflicting interests. Maintaining the measures is in the Union producers' interest, as to repeal them would put many of them out of business. So from a proportionality perspective, as the Commission does not have evidence that farmers incurring disproportionate costs as a result of the measures, it is in the Union interest to keep the measures. In any case the farmers acknowledged that they would prefer to have multiple sources of supply and that the disappearance of the Union industry would not be in their interests.

(195) Finally, as mentioned in recital 193, there is no evidence that the removal of measures would lead to a price decrease of AN which would be passed on to users leading to a switch to AN from other more polluting fertilisers. Therefore, the alleged positive environmental effect is not substantiated. In any event, any possible positive environmental effect would not be of such a magnitude that it would be against the overall Union interest to maintain the measures. As regards the suggestion to suspend the measures, this is not possible because the legal requirements enshrined in Article 14(4) of the basic Regulation are not met in this case

(196) In light of the above, the Commission concludes that terminating the measures would not be in the interest of the users, or that at very least the additional benefits enjoyed by users would not outweigh the additional costs placed on the Union industry.

7.4. **Conclusion on Union interest**

(197) In view of the recitals 179 to 195, it is concluded that there are no compelling reasons of Union interest against the maintenance of the current anti-dumping measures

8. **DEFINITIVE ANTI-DUMPING MEASURES**

(198) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

(199) Following disclosure, one Russian producer which was not selected for the sampling requested to Commission to enter into negotiation for an undertaking and suggested a minimum price and a quantitative ceiling. However, there is no legal basis in the

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basic Regulation for accepting an undertaking offer in the context of an expiry review, since the form of the measures cannot be changed. The Russian producer in question could apply for an interim review based on Article 11(3) of the basic Regulation, if they consider that the conditions for such a review are met.

(200) Following disclosure the Acron Group requested the Commission to terminate the proceedings as far as they are concerned since Acron would be in a different situation compared to the other Russian producers. However, the findings of the review are that Acron is in the same situation as the other Russian producers. Furthermore, Article 11(2) of the basic Regulation does not give a legal basis to differentiate between the different exporting producers.

(201) Accordingly, and in view of the conclusions reached with regard to the likelihood of continuation or recurrence of dumping and injury, It follows that, in accordance with Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia, imposed by Regulation (EC) No 661/2008, as amended by Council Regulation (EC) No 989/2009, should be maintained for an additional period of five years,

(202) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

(1) A definitive anti-dumping duty is hereby imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight currently 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 20 and originating in Russia.

(2) The rate of the definitive anti-dumping duty shall be a fixed amount as specified in points (a), (b) and (c):

(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 EU or sold by EuroChem Trading GmbH, Zug, Switzerland or via Open Joint Stock Company (OJSC) Mineral and Chemical Company EuroChem, Moscow, Russia, or EuroChem Trading GmbH, Zug, Switzerland to the first independent customer in the EU (TARIC additional code A522):

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

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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	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
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

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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 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
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 20	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 20	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 20	50	29,87

▼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 9 % by weight or more but not exceeding 12 % by weight	3105 90 20	60	28,88

▼M1

(b) For goods produced by 'KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk' (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 paragraph 1 produced by KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk and which are not mentioned in the table above, no anti-dumping duty shall apply.

The non-application of any anti-dumping duty for certain goods produced by KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk shall be conditional upon presentation by Joint Stock Company United Chemical Company Uralchem to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: '*I, the undersigned, certify that the (volume) of ammonium nitrate sold for export to the European Union covered by this invoice was manufactured by (*KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk *and address) (TARIC additional code A959) in Russia. I declare that the information provided in this invoice is complete and correct.*' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply to all product types of ammonium nitrate produced by KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk.

▼B

(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

▼B

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
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
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 K2O of 6 % by weight or more but less than 9 % by weight	3105 20 10	50	42,83

▼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 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 20	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 20	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 20	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 20	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 laid down in paragraph 2 shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

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

Article 2

(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 the Decision 2008/577/EC, as amended, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Union, 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 to this Regulation, and

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

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

▼B

(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 Regulation (EC) No 1225/2009 in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

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ANNEX

The following elements shall be indicated in the commercial invoice referred to in Article 2(1) second indent accompanying the company's sales to the Union 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 Union 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 Union 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 Union 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.'