COUNCIL REGULATION (EC) No 907/2007

of 23 July 2007

repealing the anti-dumping duty on imports of urea originating in Russia, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96, and terminating the partial interim reviews pursuant to Article 11(3) of such imports originating in Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation) and in particular Article 11(2) and (3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In March 1995, the Council, by Regulation (EC) No 477/95 [2], imposed a definitive anti-dumping duty on imports of urea originating in the Russian Federation (Russia). The amount of the duty imposed was the difference between ECU 115 per tonne and the net, free-at-Community frontier price, before duty, if the latter price was lower. The investigation that led to these measures will be referred to as 'the original investigation'. Following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 901/2001 [3], decided that these measures should be maintained. The measures currently in force are in the form of a variable duty on the basis of a minimum import price (MIP) of EUR 115 per tonne (the existing measures). The review investigation that led to the maintenance of the measures will be referred to as 'the previous expiry review investigation'.

(2) In December 2003, the Council, by Regulation (EC) No 2228/2003 [4], terminated a partial interim review initiated on the initiative of the Commission pursuant to Article 11(3) of the basic Regulation in order to examine the appropriateness of the form of the measures in force, without any amendment to the existing measures.

2. Requests for reviews

(3) In August 2005 [5], the Commission published a notice of impending expiry of the existing measures. On 9 February 2006 the Commission received a request for an expiry review of these measures pursuant to Article 11(2) of the basic Regulation and a request for a partial interim review limited to the form of the measures, pursuant to Article 11(3) of the basic Regulation.

(4) These requests were lodged by the European Fertiliser Manufacturers Association (EFMA) (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of urea.

(5) The applicant alleged and provided sufficient *prima facie* evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry with regard to imports of urea originating in Russia (the country concerned) and that the current form of the measures was not sufficient to counteract the injurious effects of dumping.

(6) Furthermore, on 14 September 2006, a request for a partial interim review of Regulation (EC) No 901/2001 was received from Joint Stock Company, Mineral and Chemical Company EuroChem, (EuroChem), an exporting producer of urea in Russia subject to the anti-dumping measures in force.

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(1) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
(2) OJ L 49, 4.3.1995, p. 1.
(3) OJ L 127, 9.5.2001, p. 11.
(4) OJ L 339, 24.12.2003, p. 1.
(5) OJ C 209, 26.8.2005, p. 2.

(7) In the request pursuant to Article 11(3) of the basic Regulation, EuroChem provided *prima facie* evidence to support its claims that, as far as it was concerned, the circumstances on the basis of which measures were established had changed and that these changes were of a lasting nature. EuroChem provided evidence showing that a comparison between its own costs and its export prices would lead to a reduction of dumping significantly below the level of the current measures. Therefore, EuroChem claimed that the continued imposition of measures at the existing levels, which were based on the level of injury margin previously established, was no longer necessary to offset dumping.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation and of two partial interim reviews pursuant to Article 11(3) of the basic Regulation, the Commission initiated these three reviews by publishing notices of initiation in the *Official Journal of the European Union* [1].

3. **Investigation**

3.1. *Investigation period*

(9) As regards the expiry review, the investigation of continuation or recurrence of dumping and injury covered the period from 1 April 2005 to 31 March 2006 (review investigation period or RIP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2002 up to the end of the RIP (period considered). The period used in the partial interim review for the investigation of the appropriateness of the form of the measures was the same as the period considered in the expiry review. The investigation period for the partial interim review limited in scope to the examination of dumping concerning EuroChem was the period from 1 October 2005 to 30 September 2006.

3.2. *Parties concerned by the investigation*

(10) The Commission officially advised the exporting producers in Russia, importers and users known to be concerned and their associations, the representatives of the exporting country concerned, the applicant and known Community producers of the initiation of the two reviews. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(11) The Commission officially advised EuroChem, the representatives of Russia, as well as the applicant of the initiation of the partial interim review limited in scope to the examination of dumping. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

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

(13) With regard to the expiry review and to the partial interim review limited to the form of the measures, in view of the apparent large number of Community producers, importers in the Community and exporting producers in Russia, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the investigation and to provide the Commission with the information requested in the notice of initiation.

(14) With regard to importers into the Community, only one importer provided the information requested in the notice of initiation and expressed its willingness to cooperate further with the Commission services. It was therefore decided that sampling was not necessary with regard to importers.

(15) Nine Community producers properly completed the sampling form and formally agreed to cooperate further in the investigation. Four out of these nine companies, which were found to be representative of the Community industry in terms of volume of production and sales of urea in the Community, were selected for the sample. The four sampled Community producers accounted for around 50 % of the total production of the Community industry, as defined in recital (63), during the RIP, whilst the above nine Community producers represented around 60 % of production in the Community. This sample constituted the largest representative volume of production and sales of urea in the Community which could reasonably be investigated within the time available.

(16) Five exporting producers properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. These five exporting producers accounted for 60 % of the total Russian exports to the Community during the RIP.

[1] OJ C 105, 4.5.2006, p. 12; OJ C 23, 1.2.2007, p. 8.

(17) A sample of three exporting producers which could reasonably be investigated within the time available was selected in accordance with Article 17 of the basic Regulation, based on the largest quantity of exports of urea made to the Community. The three sampled exporting producers accounted for 50 % of the total Russian exports to the Community during the RIP.

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

(19) As a result of additional information available, it was later established that one of the three sampled exporting producers actually was not amongst those having the largest quantity of exports to the Community. This exporting producer was therefore excluded from the sample and substituted with the fourth ranking exporting producer. The sample so modified accounted for 48 % of the total Russian exports to the Community during the RIP.

(20) Questionnaires were therefore sent to the four sampled Community producers, to the three sampled Russian exporting producers, as well as to all importers and users that had made themselves known.

(21) Replies to the questionnaire were received from the four sampled Community producers and three exporting producers in Russia, as well as from one unrelated importer and seven users in the Community. In addition, several importers and users and their associations submitted comments without replying to the questionnaire.

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

(a) *Sampled Community producers*

— Fertiberia S.A., Madrid, Spain,

— Nitrogénművek Zrt., Pétfűrdo, Hungary,

— SKW Stickstoffwerke Piesteritz GmbH, Lutherstadt Wittenberg, Germany,

— Yara S.A., Brussels, Belgium and its related producer Yara Sluiskil B.V., Sluiskil, The Netherlands;

(b) *Sampled exporting producers in Russia*

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

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

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

— JSC Minudobrenia, Perm, Russia,

— JSC Acron, Velikij Novgorod, Russia.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(23) The product concerned is the same as in the original investigation and in the previous expiry review investigation, i.e. urea falling within CN codes 3102 10 10 and 3102 10 90 and originating in Russia.

(24) Urea is produced mainly from ammonia, which in turn is produced from natural gas. It may take a solid or a liquid form. Solid urea can be used for agricultural and industrial purposes. Agricultural grade urea can be used either as a fertiliser, which is spread onto the soil, or as an animal feed additive. Industrial grade urea is a raw material for certain glues and plastics. Liquid urea can be used both as a fertiliser and for industrial purposes. Although urea is presented in the different forms mentioned above, its chemical properties remain basically the same and may be regarded for the purposes of the present proceeding as one product.

2. Like product

(25) As established in the original investigation and the previous expiry review investigation, the current review investigations confirmed that the product concerned and the urea produced and sold by the Community producers on the Community market, as well as the urea produced and sold on the Russian domestic market have the same basic chemical characteristics and essentially the same uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Continuation of dumping during the review investigation period

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

1.1. *General*

(27) As mentioned in recital (16), five Russian exporting producers of urea cooperated in the investigation. These five producers represented 60 % of exports of urea originating in Russia to the Community during the RIP, which corresponded to 1,39 million tonnes. Imports into the Community of the product concerned originating in Russia represented 16 % of Community consumption, which was 8,98 million tonnes in the RIP.

(28) Therefore, the level of cooperation is considered high.

1.2. *Normal value*

(29) It should be noted that one exporting producer controls two related companies, both of which are producing and exporting urea. The sample referred to in recital (19) therefore includes four companies.

(30) It was first established for each of the four companies whether their total domestic sales of urea were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for 5 % or more of the total sales volume of the product concerned exported to the Community. The investigation showed that all four companies sold representative quantities of urea on the domestic market.

(31) To establish whether sales of urea on the domestic market were in the ordinary course of trade, the cost of manufacturing had to be established. In this regard, it should be noted that energy costs, such as electricity and gas, represent a major proportion of the manufacturing cost and a significant proportion of the total cost of production. It was therefore examined, pursuant to Article 2(5) of the basic Regulation, whether the costs associated with the production and sales of the product under consideration were reasonably reflected in the records of the parties concerned.

(32) The investigation showed no indication that the electricity would not be reasonably reflected in the records. In this context, it is, *inter alia*, noted that electricity prices paid by the Russian producers during the RIP were in line with international market prices, when compared to other countries, such as Canada and Norway. However, the same could not be said with regard to gas prices.

(33) As concerns gas supplies, in fact, it was established on the basis of data published by internationally recognised sources specialised in energy markets, that the prices paid by the Russian producers were abnormally low. By way of illustration, they amounted to one fifth of the export price of natural gas from Russia and were also significantly lower than the gas price paid by the Community producers. In this regard, all available data indicate that domestic gas prices in Russia were regulated prices, which are far below market prices paid in unregulated markets for natural gas. Since gas costs were not reasonably reflected in the four companies' records, they had to be adjusted pursuant to Article 2(5) of the basic Regulation. The cost of manufacturing of the sampled companies was adjusted accordingly.

(34) In the absence of any undistorted gas prices relating to the Russian domestic market, and in accordance with Article 2(5) of the basic Regulation, gas prices had to be established on 'any other reasonable basis, including information from other representative markets'. The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs. Waidhaus being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be considered a representative market.

(35) After adjusting costs of manufacturing as described above, only two companies had representative domestic sales in the ordinary course of trade. For these two companies therefore, normal value was based on their domestic sales of the like product pursuant to Article 2(2) of the basic Regulation.

(36) For the other two companies, normal value was established on the basis of the domestic sales prices of the two producers having representative domestic sales in the ordinary course of trade mentioned in recital 35, pursuant to Article 2(1) of the basic Regulation. For confidentiality reasons, this information could not be disclosed in detail, as one of the two companies from which information was taken was related to a company for which normal value was established. Therefore, if the information had been disclosed, it would have been possible for that company to reconstruct business confidential data of the other company.

1.3. *Export price*

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

(38) In the case of one exporting producer where sales were made via a related trader in Switzerland, the export price was constructed on the basis of the resale prices of that related trader to independent customers. Adjustments were made for all costs incurred between purchase and resale, including freight, sales, general and administrative expenses, and a reasonable profit margin.

1.4. *Comparison*

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

1.5. *Continuation of dumping*

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

(41) The investigation showed that dumping took place during the RIP mostly at a lower level than in the previous expiry review investigation. The dumping margins, expressed as a percentage of the CIF Community frontier price, duty unpaid, are nevertheless substantial, i.e. in the range of 6 % to 23 %.

2. **Likelihood of Continuation of Dumping**

2.1. *Effect of the removal of the existing measures on the dumped imports*

(42) As mentioned in recital 1, the measures in force are in the form of a MIP of EUR 115 per tonne. While this MIP initially had an influence on Russian export prices of urea to the Community, such prices have been significantly above the MIP since 2003 as shown in recital 67, and during the RIP average Russian export prices have been 68 % above the MIP.

(43) It can therefore be concluded that the measures currently in force had no impact on either prices or quantities of exports of urea originating in Russia. As a consequence, it is unlikely that there will be an impact on prices or quantities of exports of urea originating in Russia should measures be repealed.

(44) Notwithstanding the above, the possible effects of (i) existing Russian spare capacity and possible new capacity and (ii) the likelihood of redirection of other sales to the Community were also examined in the investigation, as explained below.

2.2. *Spare capacity*

(45) The applicant has submitted evidence in its review request that there will be a total of nine projects, which would provide substantial new capacity in Russia in the timeframe of 2005 to 2007 due to revamps, upgrades and de-bottlenecking, accounting for an increase of at least 10 % of the existing capacity.

2.2.1. ***Cooperating producers***

(46) The possible effects of the existing spare capacity were examined. The Russian sampled producers managed to increase their production capacity by around 5 %, while they increased their production by around 15 % during the period considered. Therefore, their nominal spare capacity has significantly decreased to 170 000 tonnes, or around 6 % of production capacity:

	2002	2003	2004	2005	RIP
Capacity	2 567 648	2 567 648	2 567 648	2 640 100	2 686 591
Production	2 179 525	2 213 096	2 364 564	2 537 327	2 516 367
Spare Capacity	388 123	354 552	203 084	102 773	170 224

(47) A total of five projects out of the nine referred to in the request concerned cooperating exporting producers. Two projects were already completed during the period considered, and therefore provide no additional capacity compared to the RIP. For one project listed, only an insignificant capacity increase was established.

(48) As regards the two largest projects, which account for the majority of the capacity increase mentioned in recital 46, it was established that the company invests not only in urea capacity, but also in downstream production facilities for products such as urea-formaldehyde resins (UFR) and urea and ammonium nitrate solutions (UAN). These projects are either in an advanced stage or have already been completed post-RIP. Therefore, it can be assumed that the major part of the capacity of this project will not be sold to independent customers, but captively used as a feedstock for these downstream products. This part is therefore not taken into account in the following paragraph.

(49) It follows from the above that the three projects would lead to an additional capacity available for sale to independent customers estimated at around 150 000 to 200 000 tonnes. This corresponds to 10 % to 15 % of total Russian exports to the Community during the RIP or a potential market share of 1,5 % to 2 % of the Community market.

2.2.2. ***Non-cooperating producers***

(50) The overall spare capacity as a percentage of production capacity in Russia is in line with the spare capacity established for the cooperating producers, according to information submitted by the applicant. It is therefore considered that the non-cooperating producers have a spare capacity of around 5 % of production capacity as well, assessed to be around 140 000 tonnes during the RIP.

(51) A total of four projects out of the nine referred to in the request concerned non-cooperating exporting producers. These projects were evaluated on the basis of facts available. For one project, it was established that it was not regarding the product concerned, but methanol. One project was already completed during the period considered, and therefore provides no additional capacity compared to the RIP. One project was related to an insignificant investment of less than EUR 1 million p.a. and was therefore deemed not to have a quantifiable impact on Russian capacity. As for the remaining project, it could lead to a capacity increase of around 100 000 tonnes (corresponding to about 7 % of total Russian exports to the Community during the RIP or a potential market share of 1 % of the Community market).

2.2.3. ***Conclusion on spare capacity***

(52) The investigation showed that the additional capacity available in the medium term will be close to 500 000 tonnes. But as a significant part of the additional quantity due to revamps, upgrades and de-bottlenecking will be used captively as feedstock for downstream products, it is concluded that only about roughly half of this quantity will be available for sale to independent customers.

(53) Since the Russian domestic market is small and there are no indications that this is likely to change in the future, any increase in production will be export-oriented. As the nominal capacity utilisation of the Russian producers is around 95 %, only limited additional quantities are available for export.

(54) The existing spare capacity and non-captive additional capacity expected to be created in the near future represent together about roughly 550 000 to 600 000 tonnes, corresponding to around 40 % of total Russian exports to the Community during the RIP, a potential market share of around 6 % of the Community market. However, according to forecasts of consultancies specialised in fertilisers provided by the applicant, the worldwide demand for urea is predicted to increase at a pace similar to the increase in worldwide capacity. Therefore additional quantities available for export may be directed to the regions where additional demand exists. It is therefore probable that Russian exports to the Community will increase in significant quantities only if there is an equivalent increase in demand, i.e. such additional exports should not have a negative effect on the price level on the Community market.

(55) It cannot therefore be concluded that that the volume of Russian dumped exports into the Community will be affected by the Russian spare capacity.

2.3. *Likelihood of redirection of other sales to the Community*

(56) During the RIP, export prices to the Community of the sampled exporting producers on an ex-works basis were about 1 % to 5 % lower than export prices to other third countries. Domestic prices were also higher than export prices to the Community, especially for companies located in remote areas, due to the significant difference in transport costs.

(57) The applicant argues that there are significant investments in urea production capacity, mainly in North Africa and the Middle East. This new capacity will allegedly result in fewer opportunities for Russian exporters on other markets, and lead to increased quantities of Russian urea being exported to the Community. It was, however, established on the basis of the forecasts referred to in recital 54 that these investments will not have a significant impact on the global supply/demand balance, as global demand is predicted to increase in line with global capacity.

(58) It cannot therefore be concluded that the volume of Russian dumped exports into the Community will be affected by a redirection of goods to the Community.

2.4. *Conclusion on the likelihood of continuation of dumping*

(59) On the basis of the analysis carried out above, and in particular due to the lack of impact of current measures on export prices to the Community, it is concluded that should measures be repealed, there is a likelihood that dumping will continue.

D. DEFINITION OF THE COMMUNITY INDUSTRY

(60) Within the Community, the like product is manufactured by 16 producers, whose output is deemed to constitute the total Community production within the meaning of Article 4(1) of the basic Regulation. Eight of these 16 companies became Community producers due to the enlargement of the EU in 2004.

(61) Out of the 16 Community producers, nine companies cooperated with the investigation, all of them mentioned in the review request. Three other producers made themselves known within the time limits and sent the information requested for the purpose of sampling. However, they did not offer any further cooperation. No Community producer opposed the review request.

(62) Accordingly, the following nine producers agreed to cooperate:

— Achema AB (Lithuania),

— AMI Agrolinz Melamine International GmbH (Austria),

— Chemopetrol, a.s. (Czech Republic),

— Duslo, a.s. (Slovak Republic),

— Fertiberia S.A. (Spain),

— Grande Paroisse S.A. (France),

— Nitrogénművek Zrt. (Hungary),

— SKW Stickstoffwerke Piesteritz GmbH (Germany),

— Yara: consolidation of Yara France SA (France), Yara Italia Spa. (Italy), Yara Brunsbuttel GmbH (Germany) and Yara Sluiskil BV (The Netherlands) [1].

(63) As these nine Community producers accounted for around 60 % of the total Community production during the RIP, it is considered that the above nine Community producers account for a major proportion of the total Community production of the like product. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Community industry'. The seven non-cooperating Community producers will be referred to as 'other Community producers'.

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

E. SITUATION IN THE COMMUNITY MARKET

1. Consumption in the Community market

(65) The apparent Community consumption of urea was established on the basis of data submitted by the applicant and Eurostat data for all EU imports. Given the enlargement of the EU in 2004, for the sake of clarity and consistency of the analysis, the consumption was established on the basis of the EU-25 market throughout the period considered. As this investigation was initiated before the further enlargement of the Community by Bulgaria and Romania, the analysis is limited to the situation of the EU-25.

(66) Between 2002 and the RIP, Community consumption increased by 4 %.

	2002	2003	2004	2005	RIP
Total EC consumption in tonnes	8 651 033	8 945 707	8 954 402	8 873 804	8 978 696
Index (2002 = 100)	100	103	104	103	104

[1] It should be noted that as compared to the original investigation and the previous expiry review investigation, the 'Hydro Agri' companies have been renamed 'Yara'.

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

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

	2002	2003	2004	2005	RIP
Volume of imports (tonnes)	1 375 543	1 429 565	1 783 742	1 404 863	1 393 277
Index (2002 = 100)	100	104	130	102	101
Market share	16 %	16 %	20 %	16 %	16 %
Prices of imports (EUR/tonne)	119	133	154	180	193
Index (2002 = 100)	100	112	129	151	162

(68) The volume of Russian imports as well as their market share remained relatively stable throughout the whole period considered, except for a peak in 2004 which is explained by stockpiling in the 10 EU Member States before the enlargement of 1 May 2004. The prices of Russian imports increased from 119 to 193 EUR per tonne during the period considered. This evolution reflects the favourable market conditions described also in recital 85.

(69) The Russian import prices show that as of the beginning of the period considered (2002), the Russian producers have been exporting to the Community at a price level well above the minimum import price of EUR 115 per tonne.

(70) For the purpose of calculating the level of price undercutting during the RIP, the Community industry's ex-works prices to unrelated customers have been compared with the cif Community frontier import prices, of cooperating exporting producers of the country concerned, duly adjusted in order to reflect a landed price. The comparison showed that imports from Russia were not undercutting the prices of the Community industry.

3. **Imports from other countries**

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

	2002	2003	2004	2005	RIP
Volume of imports from Egypt (tonnes)	579 830	629 801	422 892	385 855	457 056
Market share	7 %	7 %	5 %	4 %	5 %
Prices of imports from Egypt (EUR/tonne)	149	163	178	220	224
Volume of imports from Romania (tonnes)	260 298	398 607	235 417	309 195	239 335
Market share	3 %	4 %	3 %	3 %	3 %

	2002	2003	2004	2005	RIP
Prices of imports from Romania (EUR/tonne)	123	142	175	197	209
Volume of imports from Croatia (tonnes)	126 400	179 325	205 921	187 765	187 362
Market share	1 %	2 %	2 %	2 %	2 %
Prices of imports from Croatia (EUR/tonne)	125	135	145	172	177
Volume of imports from all other countries not mentioned above (tonnes)	663 940	605 063	536 345	580 311	492 659
Market share	8 %	7 %	6 %	7 %	5 %
Prices of imports from all other countries not mentioned above (EUR/tonne)	128	172	169	206	216

(72) It should be noted that both Egypt and Romania decreased their export volumes from 2002 to the RIP, whereas Croatia's export volumes increased from 126 000 tonnes in 2002 to 187 000 tonnes in the RIP. Croatia's Community market share however remained stable at 1 to 2 %. As for the export prices, Egypt exported to the Community at prices higher than the Community industry prices throughout the period considered and Romania as of 2004. The Croatian prices, on the contrary, were lower than the Community industry's prices throughout the whole period considered. Croatia did not, however, increase its market share in the Community market during the period considered. It should be noted that imports from Croatia are, since January 2002, by Council Regulation (EC) No 92/2002 ([1]), subject to an anti-dumping duty of EUR 9,01 per tonne.

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

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

4.1. *Preliminary remarks*

(74) Where recourse is made to sampling, in accordance with established practice, certain injury indicators (production, production capacity, productivity, stocks, sales volumes, market share, growth and employment) are analysed for the Community industry as a whole ('C.I.' in the following tables), while those injury indicators relating to the performances of individual companies, i.e. prices, profitability, wages, investments, return on investment, cash flow, ability to raise capital, are examined on the basis of information collected at the level of the sampled Community producers ('S.P.' in the following tables).

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

(a) Production

(75) The Community industry's total production volume, including production for captive use, remained stable at 4,3 million tonnes between 2002 and the RIP, except for a slight temporary increase in 2003. Within the total production, the share of the production used for captive transfers also remained practically stable at around 20 % of the total production, showing that it cannot affect the injury picture of the Community industry.

([1]) OJ L 17, 19.1.2002, p. 1. Regulation as last amended by Regulation (EC) No 73/2006 (OJ L 12, 18.1.2006, p. 1).

	2002	2003	2004	2005	RIP
C.I. production (tonnes)	4 311 986	4 540 021	4 331 387	4 369 705	4 322 214
Index (2002 = 100)	100	105	100	101	100
C.I. production used for captive transfers	832 919	837 701	842 643	899 173	893 573
Index (2002 = 100)	100	101	101	108	107
As % of total production	19,3 %	18,5 %	19,5 %	20,6 %	20,7 %

(b) Capacity and capacity utilisation rates

(76) Production capacity increased slightly from 2002 to the RIP (5 %). In view of the production volume of the Community industry remaining stable, the capacity utilisation rate decreased slightly during the period considered, from a level of 84 % in 2002 to the level of 81 % in the RIP. However, as already noted in the previous expiry review investigation, the ammonia used for the production of urea can also be used for the production of other fertilisers. The capacity utilisation rate for urea production is accordingly also affected by the development of other fertilisers, and it is therefore less meaningful as an injury indicator.

	2002	2003	2004	2005	RIP
C.I. production capacity (tonnes)	5 109 600	5 153 906	5 156 743	5 402 760	5 362 590
Index (2002 = 100)	100	101	101	106	105
C.I. capacity utilisation	84 %	88 %	84 %	81 %	81 %
Index (2002 = 100)	100	104	100	96	96

(c) Stocks

(77) The level of closing stocks of the Community industry was volatile during the period considered. An increase of 27 % was recorded from 2002 to 2005, but a sharp decrease was registered during the three last months of the RIP (January-March 2006). The high volatility of the stock levels can be explained by the seasonality of the sales and by the fact that urea used for captive use is stored together with the urea sold on the free market. Therefore, the level of stocks is considered a less meaningful injury indicator.

	2002	2003	2004	2005	RIP
C.I. closing stocks (tonnes)	253 853	238 888	262 194	322 766	223 941
Index (2002 = 100)	100	94	103	127	88

(d) Sales volume

(78) Sales by the Community industry on the Community market decreased slightly between 2002 and the RIP, i.e. by 3 %.

	2002	2003	2004	2005	RIP
C.I. EC sales volume (tonnes)	3 155 215	3 242 758	3 054 663	2 996 471	3 048 955
Index (2002 = 100)	100	103	97	95	97

(e) Market share

(79) The market share held by the Community industry also decreased slightly during the period considered, being at 36,5 % in 2002 and at 34,0 % during the RIP.

	2002	2003	2004	2005	RIP
Market share of Community industry	36,5 %	36,3 %	34,1 %	33,8 %	34,0 %
Index (2002 = 100)	100	99	93	93	93

(f) Growth

(80) The Community industry lost a certain part of its market share (2,5 percentage points) in a slightly rising market (4 %) over the period considered. The market share lost by the Community industry was not taken over by Russian imports, since as indicated in recital 67, the market share of the Russian imports remained stable from 2002 to the RIP. Also, in view of the fact that the market share of imports from other countries decreased by 3,5 percentage points, it must be concluded that the market share lost by the Community industry was taken over by the other Community producers.

(g) Employment

(81) The level of employment of the Community industry declined by 6 % between 2002 and the RIP, while production increased slightly, reflecting thus an increase in productivity.

	2002	2003	2004	2005	RIP
C.I. employment product concerned	1 233	1 228	1 157	1 161	1 164
Index (2002 = 100)	100	100	94	94	94

(h) Productivity

(82) The output per person employed by the Community industry per year increased by 6 % between 2002 and the RIP, due to the reduced employment level of the same magnitude with stable production in the Community industry.

	2002	2003	2004	2005	RIP
C.I. productivity (tonnes per employee)	3 497	3 697	3 744	3 764	3 713
Index (2002 = 100)	100	106	107	108	106

(i) Magnitude of dumping margin

(83) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping found in the RIP, given the fact that: (i) the volume of imports from Russia has remained at a relatively stable level over the period considered, (ii) the Russian import prices have increased significantly throughout the same period, (iii) there was no undercutting during the RIP and (iv) the overall financial situation of the Community industry, this impact is considered not to be significant and the indicator not meaningful.

(j) Recovery from the effects of past dumping

(84) The indicators examined above and below clearly show significant improvement in the economic and financial situation of the Community industry.

4.3. *Data relating to the sampled Community producers*

(a) Sales prices and factors affecting domestic prices

(85) The sampled Community industry producers' average unit sales price to unrelated customers increased substantially between 2002 and the RIP, reflecting the prevailing favourable international market conditions for urea during the same period.

	2002	2003	2004	2005	RIP
S.P. unit price EC market (EUR/tonne)	137	149	164	188	199
Index (2002 = 100)	100	109	120	137	145

(b) Wages

(86) Between 2002 and the RIP, the annual labour cost per employee increased moderately, by 11 %.

	2002	2003	2004	2005	RIP
S.P. annual labour cost per employee (EUR 1 000)	47	50	50	52	52
Index (2002 = 100)	100	106	106	111	111

(c) Investments

(87) The annual flow of investments in the like product made by the four sampled producers developed positively during the period considered, i.e. increased by 10 % from 2002 to the RIP, although it showed some fluctuations.

	2002	2003	2004	2005	RIP
S. P. Net investments (EUR 1 000)	116 186	114 079	128 191	140 967	128 259
Index (2002 = 100)	100	98	110	121	110

(d) Profitability and return on investments

(88) Profitability of the sampled producers shows a significant improvement from 2002 to the RIP, when it reached the level of 16,9 %. In this respect, it is noted that in the original investigation, a profit margin of 5 % that may be reached in the absence of injurious dumping was established. The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend. It increased over threefold during the period considered.

	2002	2003	2004	2005	RIP
S.P. profitability of EC sales to unrelated customers (% of net sales)	7,3 %	10,9 %	17,7 %	18,4 %	16,9 %
Index (2002 = 100)	100	149	242	252	232
S.P. ROI (profit in % of net book value of investment)	13,3 %	27,2 %	45,7 %	47,0 %	45,9 %
Index (2002 = 100)	100	205	344	353	345

(e) Cash flow and ability to raise capital

(89) Cash-flow increased more than threefold during the period considered. This development is in line with the development of the overall profitability and the ROI during the period considered.

	2002	2003	2004	2005	RIP
S.P. cash flow (EUR 1 000)	30 283	52 110	84 340	99 110	105 287
Index (2002 = 100)	100	172	279	327	348

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

5. **Conclusion**

(91) Between 2002 and the RIP, the market share of the Community industry decreased slightly, as did its sales volume on the Community market. However, the overall financial situation of the Community industry has overwhelmingly improved during the period considered, as compared to the period preceding the previous expiry review that in 2001 resulted in maintenance of the existing measures, which have been in force since 1995.

(92) During the period considered, profitability of the sampled producers increased considerably, exceeding significantly, in each year of the period considered, the level of profitability set as a target profit in the original investigation. Also return on investment and cash-flow increased many times. Production volume of the Community industry remained stable. Sales prices of the sampled producers evolved positively over the whole period considered. Wages developed moderately and the Community industry continued to invest.

(93) It should be noted that the overwhelmingly positive development of the profitability of the Community industry took place in a context of the Russian export prices to the Community being significantly above the MIP albeit dumped. Therefore, throughout the period considered, the Russian export prices have not affected the Community industry.

(94) The applicant has, after receiving the disclosure of the findings of the Commission, claimed that the long term profitability requirements, measured as a return on sales, for the urea industry should be at the level of 25 % after tax. This would translate to around 36 % pre-tax profit on turnover. The applicant claimed that this is justified by the cost of establishing a new ammonia/urea complex, which would require a return on investment of 11 % (allegedly equivalent to the 36 % pre-tax profit on turnover). In this regard, it is noted that the applicant has never claimed such a high target profit in the framework of this proceeding, and in the original investigation a profit margin of 5 % that may be reached in the absence of injurious dumping was established. Furthermore, the Court of First Instance has in its judgement in Case T-210/95 confirmed that '… the profit margin to be used by the Council when calculating the target price that will remove the injury in question must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports.' [1] In the same case, it was confirmed that '… [an] argument that the profit margin which is to be used by the Community institutions must be the margin necessary to ensure the survival of the Community industry and/or an adequate return on capital, has no basis whatever in the basic regulation [2].' Indeed, in the present case the applicant has not submitted any evidence that, in the absence of the dumped imports, the Community industry would have been able to achieve returns at the level requested. Neither did the applicant show what profit margin the Community industry would have been able to achieve but for the dumped imports. This claim was therefore rejected.

(95) In the light of the foregoing, it is concluded that there was no continuation of material injury to the Community industry.

F. LIKELIHOOD OF RECURRENCE OF INJURY

(96) Since there is no continuation of material injury caused by imports from the country concerned, the analysis focused on the likelihood of recurrence of material injury should the existing measures be removed. In this respect, the lack of impact of the existing measures on Russian import volumes and prices was analysed. In addition, the possible effects of the existing Russian spare capacity and possible new capacity as well as the likelihood of redirection of other sales by the Russian producers to the Community were examined.

1. Lack of impact of the existing measures on import volumes and prices

(97) As illustrated in the table below, since 2002, the Russian export prices of the product concerned to the Community have always been above the MIP of EUR 115 per tonne, whereas as of 2003 to the end of the period considered, these prices were significantly above the MIP. During the RIP, average Russian export prices to the Community market were 68 % above the MIP. This clearly shows that at least since 2003, the Russian export prices have not been influenced by the existing measures.

	Average unit price (EUR/tonne)				
	2002	2003	2004	2005	RIP
Russian average export price	119	133	154	180	193
MIP	115	115	115	115	115
Russian prices above MIP (%)	3 %	16 %	34 %	56 %	68 %

Source: Eurostat for Russian export prices.

(98) Therefore, *ceteris paribus*, there is no reason why the Russian exporting producers would apply lower prices if the existing measures were repealed, considering they have managed to sustain much higher prices before.

(99) Moreover, as shown in recital 67, the Russian exporters have kept their export volumes to the Community market at a relatively stable level over the whole period considered, despite the fact that the existing measures have had no practical effect on the export prices since 2002 and have consequently not constituted any hindrance to increasing Russian exports.

(100) Therefore, *ceteris paribus*, it is unlikely that Russian exporting producers would sell additional volumes on the Community market if the existing measures were repealed, as the existing measures have not affected the Russian export volumes.

[1] Case T-210/95 EFMA v. Council [1995] ECR II-3291, point 60.
[2] Ibid. paragraph 59.

(101) It is therefore concluded that since the existing measures have had no impact either on the export prices practiced by the Russian exporters or the prices paid by the Community importers for the same imports, or on the quantities of Russian exports to the Community, the removal of the measures is unlikely to have any impact on such prices or quantities. Therefore, the removal of the measures would have no impact on the situation of the Community industry. Consequently, it cannot be concluded that there is a likelihood of recurrence of injury to the Community industry, if the existing measures were repealed.

(102) Notwithstanding the above conclusion, the different allegations of the Community industry relating to the possible effects of existing Russian spare capacity and possible new capacity and the likelihood of redirection of other sales of the Russian producers to the Community were also examined in the investigation, as explained below.

2. **Russian spare capacity**

(103) As explained in recitals 46 and 50, none of the sampled Russian companies had spare capacity of any significance during the RIP and the overall spare capacity level of all Russian producers was estimated to be around 5 %. The findings of the investigation are, in this respect, wholly in line with what has been argued by the applicant.

(104) As already mentioned in recital 52, it has also been established that the nine projects referred to by the applicant are not expected to lead to a significant negative effect on the Community market, since a significant part of the additional quantity created by such projects will be used captively. In addition, as mentioned in recital 54, Russian exports to the Community would be likely to increase in significant quantities only if there is an equivalent increase in demand, in which case such additional exports should not have a negative effect on the price level on the Community market.

(105) On the basis of the above, it is concluded that the Russian producers will have only limited additional quantities available for increased sales due to revamps, upgrades and de-bottlenecking. This indicates that the Russian producers would not be able to significantly increase their export sales to the Community market by virtue of Russian spare capacities.

3. **Likelihood of redirection of other sales to the Community**

(106) As indicated above in recital 67, the imports from Russia to the Community market have remained relatively stable throughout the period considered, accounting for around 16 % market share of the Community consumption throughout the period considered, except for a peak in 2004 (around 20 %). This is despite the fact that, as shown above, the existing measures have had no practical effect on the export prices and export quantities during the whole of the period considered and have consequently not constituted a hindrance to increasing Russian exports.

(107) The investigation has shown that during the RIP, export prices of the sampled exporting producers to the Community on an ex-works basis were about 1 % to 5 % lower than export prices to other third countries. As indicated in recital 56, Russian ex-works domestic sales prices were also higher than export prices to the Community, in particular for companies in remote areas, due to the significant differences in transport costs as mentioned already. On this basis it can be concluded that as far as prices are concerned, the Community market is not particularly attractive as compared to other main markets for Russian producers.

(108) Furthermore, as mentioned in recital 57, the applicant has argued that production stemming from additional capacities being built in particular in North Africa (Algeria and Egypt) and the Middle East (Iran) would put pressure on the worldwide prices, thereby reducing the Russian exporters' penetration capacity on those markets and leading them to increase their export quantities to the Community market. In this respect, it was established on the basis of the forecasts referred to in recital 54 that these investments will not have a significant impact on the worldwide supply/demand balance, as global demand is predicted to increase in line with global capacity. Furthermore, the investigation has shown that the Russians have already lost significant shares in the Asian (especially the People's Republic of China) and African markets and that they are holding quite well the pressure in the Latin American markets. Considering the predicted global supply/demand balance, the argument that Russian exporting producers may lose additional market shares everywhere but Europe seems unlikely.

(109) It has been argued by the applicant that the unfair cost advantage enjoyed by the Russian producers due to the existence of the double pricing of gas could lead to a significant undercutting by the Russian exporters, *inter alia*, if the international supply/demand balance were to become unfavourable. While this cannot be excluded because the investigation has shown that the cost structure of the Russian exporters is indeed significantly distorted by the double pricing of gas practised by Russia, the potential undercutting would not be a direct consequence of the removal of the measures, but due to other circumstances.

(110) It cannot therefore be concluded that it is the Russian producers' intention to redirect any significant part of the volumes currently exported to third countries or sold on the domestic market to the Community market or to reduce their prices as a consequence of the removal of the measures, even if it cannot be excluded that this may happen due to other circumstances.

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

(111) As shown above, the existing measures have had no impact either on the export prices practiced by the Russian exporters or the prices paid by the Community importers for the same imports, or on the Russian export volumes to the Community market. At the same time, despite the continuation of dumped imports from Russia, the Community industry has not suffered any injury. Therefore the repeal of the existing measures will not have any impact on the Russian export prices or volumes and thus no impact on the situation of the Community industry.

(112) Moreover, the analysis of other exogenous factors alleged by the applicant does not put into question the above conclusion, since they do not even indicate any reasonable possibility of increasing the volumes and decreasing the prices of the Russian imports to the Community market due to exogenous factors.

(113) On the basis of the above, it cannot be concluded that there is a likelihood of recurrence of injury to the Community industry if the existing measures are repealed.

G. **ANTI-DUMPING MEASURES**

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

(115) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of urea originating in Russia should be repealed and the proceeding terminated.

(116) In consideration of the circumstances described in recital 109, i.e. that the cost structure of the Russian exporters is significantly distorted by the double pricing of gas practised by Russia, it is found necessary to monitor closely the evolution of the imports of urea originating in Russia, with a view to facilitating swift appropriate action should the situation so require.

(117) Since, in accordance with the preceding recitals, the existing measures should be repealed and the proceeding terminated, the partial interim review concerning the appropriateness of the form of the measures and the partial interim review limited in scope to the examination of dumping concerning EuroChem should also be terminated,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping duty on imports of urea falling within CN codes 3102 10 10 and 3102 10 90 and originating in Russia is hereby repealed and the proceeding concerning these imports is terminated.

Article 2

The partial interim reviews of the anti-dumping measures applicable to imports of urea falling within CN codes 3102 10 10 and 3102 10 90 and originating in Russia are hereby terminated.

Article 3

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

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

Done at Brussels, 23 July 2007.

For the Council

The President

L. AMADO