II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 54/2010

of 19 January 2010

imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1], repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [2] ('the basic Regulation'), and in particular Articles 9(4) and 11(2) of Regulation (EC) No 1225/2009,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In February 1994, the Council imposed, by Regulation (EC) No 229/94 [3], definitive anti-dumping duties on imports of ethanolamines (product concerned) originating in the United States of America ('USA').

(2) Following a request of the Conseil européen des fédérations de l'industrie chimique (CEFIC), an expiry review pursuant to Article 11(2) of the basic Regulation was initiated in July 2005. By Regulation (EC) No 1583/2006 [4] the Council concluded that review and imposed definitive anti-dumping measures on imports of ethanolamines originating in the USA. The duties were in the form of a specific fixed duty.

2. Request for an expiry review

(3) Following the publication in March 2008 of a notice of impending expiry of the anti-dumping measures applicable to imports of ethanolamines originating in the USA [5], the Commission received on 25 July 2008 a request for a review pursuant to Article 11(2) of the basic Regulation.

(4) The request was lodged by BASF SE/AG, INEOS Oxide Ltd, Sasol Germany GmbH and Akzo Nobel Functional Chemicals AB ('the applicant Union producers') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of ethanolamines.

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

(6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated by notice of initiation an investigation [6] pursuant to Article 11(2) of the basic Regulation.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 56, 6.3.1996, p. 1.
[3] OJ L 28, 2.2.1994, p. 40.
[4] OJ L 294, 25.10.2006, p. 2.
[5] OJ C 71, 18.3.2008, p. 13.
[6] OJ C 270, 25.10.2008, p. 26.

3. **Investigation**

(7) The Commission's services officially advised the Union producers, the exporting producers in the USA, importers/traders, users in the Union known to be concerned, as well as the authorities of the USA of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice of initiation.

(8) The Commission's services sent questionnaires to all parties known to be concerned and to those who requested a questionnaire within the time-limit set out in the notice of initiation.

(9) The Commission also gave the parties directly concerned 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.

(10) Replies to the questionnaire were received from two exporting producers in the USA, one related importer in the Union, one related importer in Switzerland, the applicant Union producers and one industrial user in the Union. One additional exporting producer in the USA (Huntsman Petrochemical Corporation) submitted a document ('position paper') in which it claimed that the measures should be repealed but did not, however, respond to the questionnaire.

(11) The Commission's services sought and verified all the information deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

a. Applicant Union producers

BASF SE/AG, Ludwigshafen, Germany

INEOS Oxide Ltd, Southampton, United Kingdom

Sasol Germany GmbH, Hamburg, Germany

Akzo Nobel Functional Chemicals AB, Stenungsund, Sweden

b. Exporting producers in the USA

The Dow Chemical Company, Midland, Michigan and Seadrift, Texas, USA

INEOS Oxide LLC, Houston, Texas and Plaquemine, Louisiana, USA

c. Related importer in the Union

INEOS Oxide Ltd, Zwijndrecht, Belgium

d. Related importer in Switzerland

Dow Europe GmbH, Horgen, Switzerland

e. Industrial user in the Union

Evonik Degussa GmbH, Essen, Germany

4. **Review investigation period**

(12) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2007 to 30 September 2008 ('RIP').

(13) The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 up to the end of the RIP ('period considered'). Furthermore, trends for the assessment of a likelihood of a continuation or recurrence of injury were also evaluated under the angle of the impact of the effects of the world economic crisis on the ethanolamine market post RIP.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(14) The product concerned is the same as that covered by the previous investigations, i.e. ethanolamines currently falling within CN codes ex 2922 11 00, ex 2922 12 00 and 2922 13 10 originating in the USA. Ethanolamines are obtained by making ethylene oxide (EO), itself a result of a reaction of ethylene and oxygen, react with ammonia. This synthesis leads to three competing reactions and to three different types of ethanolamines: monoethanolamine (MEA), diethanolamine (DEA) and triethanolamine (TEA), depending on how many times EO is bound. The maximum number of combinations is limited by the number of hydrogen elements in ammonia, namely three. The proportions of the three types in the total output are determined by the specific design of the production facilities, but can, to a certain extent, be controlled by the ammonia/EO ratio (the molar ratio).

(15) The product concerned is used as an intermediate and/or additive for surfactants used in detergents and personal care products, cosmetics, fertilisers and crop protection agents (glyphosate), corrosion inhibitors, lubrication oils, textile auxiliaries and fabric softeners (esterquats), photographic chemicals, paper and metal-works, wood treatment, as a grinding and binding aid for cement production and as a gas scrubber absorption aid (sweetening the gas by removing acids). The product can also be used by the manufacturers themselves or by their related manufacturers in the production of ethyleneamines. New MEA applications include taurine and electronics, in particular products belonging to the LCD sector.

2. **Like product**

(16) As in the original and previous review investigations, it was shown that the product concerned produced in the USA and sold to the Union is identical in terms of physical and technical characteristics to the product produced and sold in the Union by the Union producers and that there is no difference in use between those products. It has further been found that the product concerned produced in the USA and sold to the Union is identical to that sold on the US domestic market. Therefore, all these products must be considered to be like products within the meaning of Article 1(4) of the basic Regulation.

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

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

1. **Preliminary remarks**

(18) Of the four US exporting producers named in the complaint, two cooperated in the investigation, one did not cooperate but only submitted a position paper while no reply or any other information was received from the fourth US company mentioned in the complaint.

(19) The two cooperating exporting producers represented the major proportion (i.e. more than 90 %, the precise figure cannot be disclosed for reasons of confidentiality) of imports to the Union during the RIP, which amounted to 37 583 tonnes and which is 8,5 % lower than the imports during the previous investigation period (1 July 2004 to 30 June 2005). Imports into the Union of the product concerned originating in the USA represented 14 % of Union consumption during the RIP.

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

Normal value

(20) With regard to the two cooperating US exporting producers, normal value was established for each type of the product concerned, based on the price paid or payable on the domestic market in the USA by unrelated customers pursuant to Article 2(1) of the basic Regulation, since these sales were found to have been made in sufficient quantities and in the ordinary course of trade.

Export price

(21) As in the original and in the previous review investigations, this investigation showed again that the two cooperating US exporting producers exported the product concerned to the Union via companies which are related. As a consequence, and in accordance with Article 2(9) of the basic Regulation, export prices were constructed on the basis of the prices at which the imported product was first resold to independent customers in the Union. Allowance was made for all costs incurred between importation and resale, including selling, general and administrative costs and the profit realised in the Union by the importing companies during the RIP. With respect to profit margin, the actual profit of the related traders could not be used since the relationship between the exporting producers and the related traders made these prices unreliable. Their profit margin was thus set at a reasonable rate, not exceeding the actual profit margin obtained by the related traders and in line with profit margins used for the similar reasons in the previous review.

Comparison

(22) The normal value was compared with the average export price for each type of the product concerned, on an ex-works basis and at the same level of trade. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors which were claimed and demonstrated to affect price and price comparability were taken into account. Adjustments were made for inland and ocean freight, deferred rebates, handling and packaging costs, credit costs and import duties, which were all deducted from the resale prices in order to arrive at an ex-works basis.

Dumping margin

(23) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established per product type on the basis of a comparison of the weighted average normal value with the weighted average export prices at the same level of trade. This comparison showed the existence of dumping during the RIP, albeit at a lower level than that established in the previous review. The weighted average dumping margin expressed as a percentage of the CIF value at the Union frontier was 11,9 % for INEOS Oxide LLC and 0 % for Dow Chemical. With respect to the other US producers who did not cooperate with the investigation and covered during the RIP less than 5 % (the precise figure cannot be disclosed for reasons of confidentiality) of the US imports of the product concerned to the Union, the dumping margin had to be based on facts available in accordance with the provisions of Article 18 of the basic Regulation.

As stated above, the investigation established the existence of dumping. Thus, in line with the provisions of Article 18(6) of the basic Regulation, the existence of dumping at the level found for INEOS Oxide LLC, i.e. 11,9 %, is attributed also to those exporters that did not cooperate with the investigation. Indeed, there is no reason to believe that a party that did not cooperate with the investigation was dumping less than any cooperating party and to treat such party more favourably than parties that have cooperated. It should be noted that there was no verifiable information available for the non-cooperating US producers while the verified questionnaire replies of the cooperating US exporting producers in comparison with the Eurostat statistics rules out the possibility that the missing quantities were exported by the cooperating US exporting producers.

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

Preliminary remarks

(24) Further to the analysis of the existence of dumping during the RIP, the likelihood of the continuation of dumping was examined.

Level of dumping in case the measures are repealed

(25) The removal of the measures would allow exporters to reduce their export prices. A reduction of export prices would make the US product more attractive on the Union market. If the export prices were reduced commensurate to the level of the anti-dumping duties, the dumping margins observed during the RIP would be 12 % for INEOS Oxide LLC and for the non-cooperating parties (in line with Article 18 of the basic Regulation) while there would be still no dumping for Dow Chemical. The small difference between the dumping margin with duty included and the one without duty is due to the fact that, during the RIP, the general price level for ethanolamines was quite high which meant that the anti-dumping duty imposed in the form of a specific fixed amount had a minimum impact. Subsequent to the RIP, prices of ethanolamines have generally decreased to a significant extent as explained in more detail below.

Further room for exports to the Union market because of unused US production capacity during the RIP

(26) The spare production capacity in the USA during the RIP is not insignificant. It is estimated that there are some 60 000 tonnes of unused production capacity in the USA during the RIP. This was calculated on the basis of volumes produced from the two cooperating exporting producers, the fact that normally expected production rates are around 90 % of nameplate capacity, the assumption that the actual production yields of non-cooperating US producers would have not run at actual production rates lower than 80 % of name plate capacity, as well as information from leading market journals. The above figure may rise up to some 85 000 tonnes if more ambitious production rates are achieved. Compared to an estimated nameplate total capacity in the USA of 732 000 tonnes, total estimated demand including captive consumption amounted to 588 000 tonnes. The relatively low capacity utilisation rate was a consequence of a number of incidents that took place during the recent years, namely the selective shut-downs that US producers did in order to keep their inventories low, the implementation of their capacity expansions (Dow Chemical's last expansion by 45 000 tonnes and one of the non-cooperating US exporting producer's last expansion of 32 000 tonnes) and the impact of hurricanes Gustav and Ike on certain production facilities or some raw materials production facilities respectively. As far as the hurricanes Ike and Gustav are concerned, they still had a certain impact during the RIP but their impact was removed post RIP.

The impact according to the 2008 estimations by the PCI Consulting Group (PCI) is 39 000 tonnes of lost production [1]. The existence of potential unused production capacities in the USA during 2007 and 2008, i.e. during a period covered by the RIP, is also confirmed by a leading yearly publication which reviews the ethanolamine market [2]. This publication estimated for 2007 an oversupply of 65 000 tonnes in the US market. The spare capacity of around 60 000 tonnes should be compared to the volume of exports from the USA to the Union during the RIP (37 583 tonnes) and total Union consumption (268 000 tonnes). It follows from the above that there is potential to increase exports from the USA and take over part of the Union market.

[1] Ethylene Oxide & Glycol Market Outlook by PCI Xylenes & Polyesters Ltd (hereafter PCI), October 2008 issue.

[2] Chemical Economics Handbook Product Review-Ethanolamines-SRI Consulting, January 2009, 642.5000 A, p. 14-15.

Further room for exports to the Union market because of weak prospects in other US export markets

(27) In connection to a number of important US export markets the investigation has shown that US producers will have increasingly difficulties to supply these markets because these markets have recently become or will soon become self-sufficient. Indeed, there is a series of capacity expansions in third country markets that have either been concluded recently or are currently in the process of being implemented and that are supplied by the USA. These are:

(i) the recent capacity expansion in Brazil (ranging from 55 000 to 65 000 tonnes, depending on the sources), an important export market for the US producers;

(ii) an aggregated expansion of 180 000 tonnes in China, a market to which some US producers export via joint ventures established in other Asian countries; and

(iii) the expansion in Taiwan and Thailand (aggregated together at 90 000 tonnes) which makes the Asian market an area characterised by overcapacity, with little room for any party outside the Asian zone to export to the Asian market. Total US exports to markets other than the Union in 2008 amounted to 137 600 tonnes, with the Asian market receiving 61 600 tonnes [1].Thus an important quantity will have to be channelled to new markets.

(28) To conclude, as set out in recital 26, there is spare capacity of some importance available which could be used to produce more ethanolamines and to sell them on the Union market should measures be repealed. Moreover, important export markets for US producers are likely to be saturated by increases in their local productions thus making the Union market a highly attractive option for US exports.

Further room for exports to the Union market because of the behaviour of one non-cooperating US producer

(29) The possible business behaviour of the non-cooperating US party mentioned under recital 10 was also examined. It is recalled that the sole information that this party submitted was a position paper in which it concluded that there is no injury caused by imports of US origin ethanolamines and no likelihood of recurrence of injurious dumping. The company argued that during the RIP it only had minor sales of the product concerned to two unrelated and one related parties in the Union. It also stated that it wishes to have a regular and fair pattern of sales to the Union but did not provide any concrete data or verifiable information concerning either its RIP performance with respect to the product concerned or its intended future behaviour in the ethanolamine business with respect to the Union market. Therefore findings with respect to this non-cooperating US producer had to be based, in line with the provisions of Article 18 of the basic Regulation, on facts available. In this respect publicly available information was obtained from this party's corporate website as well as relevant data published by the *CEH Product Review on Ethanolamines* (SRI Consulting), a leading market journal. Based on the above it was concluded that this non-cooperating US producer accounted for 29 % of US production capacity during the RIP with the product concerned considered as a business sector belonging to the company's best performance product divisions.

The overall importance of the Union market was also confirmed by the fact that sales to the Union represent some 33 % of this company's total sales. Given the magnitude of this producer in the US market, its production capacity, the overall importance of the Union in its business activities and the importance of the Union market in the worldwide ethanolamine market, it is reasonable to assume that this non-cooperating US producer would further increase its export activities to the Union, should measures be allowed to lapse. There would be an incentive to do so on the basis of the data prevailing during the RIP, especially because of the high price levels of the product concerned in the Union market.

Trade defence measures in third country export markets

(30) Since November 2004 China levies anti-dumping duties on MEA and DEA originating in Japan, USA, Iran, Malaysia, Taiwan and Mexico. Ethanolamines originating in the USA are subject to duties ranging from 20 % to 74 %. In 2008 11 % of total US exports went to China [2], a market with increasing demand for the product concerned and which in 2007 was producing approximately 24 % of its total internal consumption of ethanolamines. It should be noted that Dow Chemical formed a joint-venture with Petronas, called Optimal, and installed 75 000 tonnes capacity in Malaysia, dedicated since 2002 to serve the Asian ethanolamine market. But the fact remains that genuine US exports to China are subject to measures and thus limit for all practical purposes the potential to absorb in any significant way spare capacities.

[1] PCI, January 2009 issue.

[2] PCI, April 2009 issue.

(31) Furthermore, it appears that the US ethanolamine export potential to China is also undermined by the fact that the Chinese duty regime on ethanolamines imported from ASEAN countries has been altered (import duty reduced from 5 % to 0 %) thus providing a further advantage to ethanolamine producers in the ASEAN countries exporting to China [1].

Development of demand in the USA up to RIP

(32) The ethanolamine market has been characterised by strong growth in the demand for DEA, triggered by the use of DEA in the production of glyphosate herbicides. The demand for TEA is specifically driven by the use in the cement sector and by the producers of fabric softeners. The main market for MEA is the synthesis of organic compounds (mainly ethyleneamines). A US Regulation, effective as of 1 January 2005, prohibiting the use of alternative metal-based products for wood treatment, caused an increase in demand for MEA. However, information from leading journals suggests that the impact of the 2005 US legislative initiative on demand will no longer give rise to high percentage increases in consumption in the future. Indeed public available information confirms that MEA consumption destined for wood preventatives went from 3 000 tonnes in 2001 to 107 000 tonnes in 2007. However since 2006 annual growth rates are modest (i.e. 3 %) and are not expected to change significantly in the future. This is due to the fact that this segment of the market has stabilised and that there is competition in the wood preservative market from other products not using MEA (like borate-based wood preservatives, naturally pest-resistant wood species and recycled steel). In summary, there was up to the RIP a positively developing demand which is, however, expected to level off.

Possible development of demand in the USA and in other markets

(33) The information available relating to possible developments in demand in the USA and the rest of the world for the period up to 2013 was also reviewed. All figures in the following recitals are based on information sourced from the complainants, Dow Chemical, INEOS Oxide LLC and the chemical industry's leading reference publications issued by SRI Consulting, PCI and Tecnon OrbiChem Ltd. The data do not reflect yet the impact of the current economic crisis.

(34) According to that information, the annual average growth rate of US demand is expected to reach 3,1 %. Growth rates in other markets are higher. The projected Union annual average growth rate will not reach 4 %, compared to 4,6 % in China, 5 % in Central and South America and 13,4 % in the Middle East. This situation confirms that US producers will have to search for export markets and endeavour to maximise their presence and gains in areas of the world that are expected to perform stronger in terms of growth and where opportunities for greater market shares exist.

(35) If the development in demand is compared to the available production capacity, the following picture emerges, again on the basis of pre-crisis data: in the USA, during the RIP where the actual production was some 65 000 tonnes higher than the effective consumption of the product combined with spare capacity, it will take some time before the additional production capacity that became recently operational is absorbed. Public available information suggests that excess capacity in the USA is not expected to disappear before 2013. Thus, there will not likely be any reduced incentive for US producers to export in the foreseeable future.

(36) In contrast, in 2007, demand on the European market slightly exceeded [2] Union production capacity. However, on the basis of pre-crisis data, it is unlikely that this situation remains unchanged. Indeed, if the projected growth rates are compared with the announced capacity expansions, some excess capacity can be expected should INEOS Oxide Ltd's investment plans in the Union be implemented. Such capacity expansion is not expected to become operational before the end of 2010. Thus, the Union market would become very vulnerable to any pressure originating from the need of US producers to ensure markets for their surplus production.

(37) In general, worldwide production capacity is likely to increase from around 1 764 000 tonnes to 2 423 000 tonnes (nameplate capacity) by 2013. This includes new capacity installed in the Union (+ 119 000), Russia (+ 50 000), Saudi Arabia (+ 100 000) and Asia (+ 394 000) [3]. In China ethanolamine capacity increases of 344 000 tonnes are planned to take place in the 2009-2011 period. Account taken of the fact that one US producer sells the product concerned to China via a joint venture operation in Malaysia, it is obvious to expect that any increase in self-sufficiency in China will seriously narrow the US producer's export options. As regards the rest of the Asian markets, available information confirms that they too are becoming self-sufficient, thus putting extra pressure on the US producers to find new markets.

[1] Tecnon OrbiChem publication, 17 March 2009.

[2] SRI publication, January 2009.

[3] Tecnon OrbiChem publication, 17 March 2009.

(38) World demand, based on a projected growth rate of 3,5-4 %, will increase to 1 836 000 tonnes by 2013. Taking into account that some capacity surplus is always absorbed by stoppages for maintenance and that therefore a certain buffer is needed, the projection for 2013 shows only an equilibrium in the USA and excess capacity elsewhere. In sum, the various capacity expansions and projections of the market situation leading up to 2013 point to the likelihood of US exporting producers dumping on the Union market because the match of supply and demand on the US market will probably not take effect before 2013.

Shift from monoethylene glycol production to production of ethalonamines

(39) It should be noted that ethanolamines form part of the business sector of EO derivatives. Monoethylene glycol (MEG) also belongs to this sector. There are indications that most of the EO derivatives producers in Asia are trying to concentrate on EO derivatives business other than MEG due to very depressed glycol markets, thus bringing more ethanolamines onto the market. Indeed, due to very weak MEG prices in 2008, those Asian producers that can produce MEG and ethanolamines chose to favour ethanolamine production to improve their overall profitability ([1]). This likely tightens the ethanolamine market in Asia, which in 2008 represented 18 % ([2]) of total US exports. Based on information from the beginning of the current economic crisis, there were some predictions that substantial shortages in Asia would still exist in the very short term ([3]) but all these are expected to be overtaken in the medium term account taken of the substantial increase of ethanolamine capacity in Asia as explained under recital 27.

(40) Post RIP available information confirms that due to the very weak MEG prices producers that produce both MEG and ethanolamines will favour ethanolamine production in order to improve their overall profitability. With respect to the evolution of MEG capacities in the world, information ([4]) suggests that MEG capacities have increased by approximately 19 % during the period considered. Apart from Asia, this was especially attributed to increases in the Middle East countries (Iran, Kuwait and Saudi Arabia), where expansions of MEG will continue up to 2015. In Mexico a 40 000 tonnes capacity increase for ethanolamine production took place during the period considered while available information suggests that a switch from MEG production to ethanolamine production should be expected. This situation confirms that the world market is facing a serious oversupply problem in MEG production and explains why world MEG prices are falling.

([1]) Tecnon OrbiChem publication, 17 December 2008.
([2]) PCI, April 2009 issue.
([3]) Based on consumption and expansion plans data of SRI publication, January 2009.
([4]) PCI, April 2009 issue; Tecnon OrbiChem publication, 17 December 2008 and 17 March 2009.

(41) Since the USA is the most important ethanolamine market in the world it is expected that it will be the first market that will be faced with the consequence of MEG overcapacity, i.e. drop in MEG prices and switch of the relevant raw material (EO) from the production of MEG to the production of ethanolamines. It is obvious that MEG overcapacity and the resulting consequences together with the already identified ethanolamine surplus in the US market will put pressure on the ethanolamine prices.

Relationship between US export prices and Union prices

(42) In general, sales on the Union market are less often made under fixed term contracts than on the US market but all verified contracts contained clauses allowing for a comparatively quick adaptation of prices (normally within a few weeks) as a result of any price fluctuation. Consequently, the existence of a sales contract does not mean that sale prices are set for a longer period and are as a result stable. Unit prices are very much driven by world market prices.

(43) Industrial users in the USA and in the Union usually obtain similar conditions on both markets as they are often multinational companies that negotiate their sourcing on a worldwide basis and select suppliers that are capable of delivering on a similar scale. Sales to traders and distributors by the two cooperating exporting producers represent only between 10 % and 20 % of the volumes sold on the US domestic market and between 25 % and 35 % of sales on the Union market. According to verified data, the US domestic prices to traders were on average 7 % lower than the Union prices and US sales prices to domestic industrial users were on average approximately 30 % lower than to the Union users. These data confirm that during the RIP there was a comparatively significant difference between the two markets with the Union market prices being higher than the US prices. Therefore, account taken of the saturation in the other US export markets and the level of prices in the EU, the termination of measures would constitute a significant incentive to increase exports to the EU should such price difference continue in the near future.

In this respect it is noted that, as it is explained under recital 48, relevant post RIP data suggest that, due to the world economic crisis, US prices surpassed Union prices in the post RIP period.

(44) On the basis of the data relating to the RIP and given the not insignificant price difference between US and EU prices for industrial users, which constitute the majority of customers, the termination of the measures would constitute a significant incentive to shift US sales to the EU. In any event, this picture has changed post RIP and for most product types US exports would only be competitively priced if they are made at dumped levels (see recital 48).

Relationship between the US export prices to third countries and to the Union

(45) The investigation showed that the main export markets for the USA during the RIP were Canada, Mexico, Brazil and the Union. With respect to sales prices, US export prices to third countries are generally higher than on the US domestic market and the US export prices to the EU are generally higher than the ones to the rest of the world. Although the above could partially be attributed to the lower export volumes (i.e. lower volumes typically result in higher prices), it also confirms the importance of the export markets for US producers who could always expect higher prices and thus consider these markets as very attractive in case problems such as oversupply/overcapacity or erosion of demand arise in the US domestic market.

(46) Overall ethanolamine pricing deteriorated towards the end of 2008 from an all time high in the third quarter and the beginning of the fourth quarter of 2008. Subsequently, prices weakened due to weak demand and much lower ethylene costs ([1]). That this erosion of prices occurred also in traditional US export markets such as Canada, Mexico or Brazil is also evident ([2]) thus pointing out that post RIP prices in traditional US export markets are lower than in the EU.

(47) To conclude, for both cooperating exporting producers, the US market in principle remains the most important sales market. The Union and Canada (the latter with no ethanolamine production) absorb most US exports of the product concerned, followed by Brazil and Mexico. Approximately 20 % of US production was exported during the RIP with price levels that were generally higher than those charged in the domestic US market. Thus, during the RIP sales to the Union and to the rest of the world played an important role in the overall use and profitability of production capacities installed. While prices have changed significantly subsequent to the RIP, there is no doubt as to the continued importance of export markets for profitability and capacity utilisation. There is nothing to suggest that all the above does not apply to the non-cooperating US producers.

([1]) PCI, April 2009 issue.
([2]) Tecnon OrbiChem publication, 17 March and 14 August 2009.

Effect of the current economic crisis

(48) One element that is expected to play a crucial role in the development of worldwide capacity and demand in the near future is the impact of the recent world economic crisis. DOW Chemical has claimed that the crisis will not have a significant impact on the ethanolamine business, that the current crisis is bottoming out and prices are expected to pick up again during the second half of 2009. The Union industry on the other hand claimed that demand has fallen by 30 %, their sales prices have fallen sharply and this decrease was higher than the decrease in price of the relevant raw material used for the production of ethanolamines, namely EO and ammonia.

DOW Chemical's claims were not found to be convincing. Historically, demand for certain end-use sectors of the product concerned, like personal care products, was negatively affected by economic downturns. As it was already stated, the impact that the wood treatment legislation in the USA had on US demand is expected to phase out soon while the well-known weakness of the construction and car sector both in Europe and in the USA does not seem to help either the cement sector or the automotive fluids demand for the product concerned at least in the foreseeable future. In addition, textile applications in the USA have also observed a downwards trend over the time and then a levelling off in 2007. All in all, Dow Chemical's claims regarding the economic crisis and the future development in prices were not confirmed by any available public information submitted during the present investigation. The available information from leading specialised journals confirmed the Union industry's representation that demand was significantly down, in some sectors even by 40 %.

Available post RIP data suggest that dumping has increased compared to the situation prevailing during the RIP. As stated above, during the RIP there was a comparatively significant difference between the EU and US markets with EU prices often higher than US prices. Thus, dumping was found for two US exporters but not for the third one. Towards the end of the RIP and in October 2008 there was clearly an overheating of the market. In particular, US prices increased significantly and overtook the EU prices in two out of the three product types (MEA and DEA which constituted 41 % of the US exports) while the difference with TEA was significantly reduced. Even though prices have decreased significantly since October 2008, the most recent available data suggest that prices in the USA are still higher than those in Europe, especially the prices of MEA and DEA. In other words, any exports from the US to Europe will have to enter at dumped prices if they are to compete with European products on the basis of price.

Conclusion on the likelihood of a continuation or recurrence of dumping

(49) It is recalled that dumping during the RIP was found to exist for one of the two cooperating exporting producers, however at a lower level than in the previous review investigation. There was also dumping with regard to the exporting producers that were, however, not cooperating.

(50) Compared to the previous review investigation, the market share of US imports decreased from 16,7 % to 14 %. There is still significant spare capacity in the USA, at around approximately 60 000 tonnes, although at a reduced level compared to the previous review. It should be noted that the low utilisation rate during the RIP was a consequence of temporary events, and that the use of an estimated 29 % of US installed capacity could not be investigated due to a lack of cooperation. At the same time demand on the US market is expected to grow at a slightly lower pace than in the Union and excess capacity in the USA is expected to be absorbed at the earliest by 2013. Furthermore, US producers have an incentive to increase their sales to the Union market, should measures be repealed, since in a number of instances prices in the Union were found to be higher than prices charged either in the domestic USA market or in any other export market served by the US producers during the RIP. The aforementioned points show that there is an incentive for US companies to increase their presence in the Union market. This would lead to an oversupply and the ensuing downwards spiral of prices, i.e. an even higher volume of dumped imports than during the RIP. The likelihood of continued/increased dumped imports based on RIP data is further exacerbated if post RIP developments are taken into account. Following the RIP and as a result of the world economic crisis, US prices surpassed EU prices for a significant part of the product concerned while price levels in the rest of the world are generally lower. The post RIP development clearly entails that if US producers were to compete with the Union industry their products would have to enter at dumped prices at an even larger scale than during the RIP.

(51) To conclude, there is a likelihood of continuation of dumping and a risk of an increase of the volume of imports possibly exerting a downward pressure on prices in the Union, at least in the period leading to 2013, if measures were repealed.

D. **DEFINITION OF THE UNION INDUSTRY**

(52) The complaint was lodged on behalf of four known EU ethanolamine producers, representing a major proportion of the total known Union production of the like product, i.e. in this case more than 95 %.

(53) The four applicant Union producers fully cooperated in the investigation. Another Union company, LUKOIL Neftochim Bourgas AD, supported the complaint as Union producer but did not reply to the questionnaire and did not provide any other information or data. The applicant Union producers have production sites in France, Germany, Sweden and Belgium.

(54) It should be noted that one Union producer, INEOS Oxide Ltd, has also product interests in the USA. During the investigation that particular producer declared that it considers itself as a committed Union producer. The company imported during the RIP the product concerned from its related US producer but the proportion of imports in relation to its Union production is less than 10 %. Furthermore, according to the available information, this producer has plans to expand capacity in the Union by the end of 2010. In line with the above, that company can be considered as a genuine Union producer since its imports are not the core part of its business activity. Therefore, it is not considered appropriate to exclude this producer from the definition of the Union industry in line with Article 4(1)(a) of the basic Regulation.

(55) On this basis the four Union producers are BASF SE/AG, INEOS Oxide Ltd, Sasol Germany GmbH and Akzo Nobel Functional Chemicals AB and they constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They will hereinafter be referred to as the 'Union industry'.

(56) The investigation showed that, like in the previous review investigation, part of the production of ethanolamines in the Union is intended for internal, or captive, use. Three of the four companies belonging to the Union industry produce for captive use. The investigation confirmed that the Union industry does not purchase the product concerned for captive use from independent parties, either inside or outside the Union, and that captive production is used for the production of other downstream products. Ethanolamines for captive use are therefore not considered to be in competition with ethanolamines available on the Union market ('the free market').

E. SITUATION ON THE UNION MARKET

1. Union consumption

(57) Union consumption was based on the combination of the volume of the Union producers' own production destined for free sale on the Union market and for captive use by these producers and the volumes of imports from third countries into the Union market minus exports of the Union producers. Estimations for the non-cooperating producer, which represents a very small part of Union production, were also added.

(58) On this basis, the Union consumption developed as follows:

Consumption (in tonnes)	2005	2006	2007	RIP
Total	439 521	438 872	479 361	475 269
Index	100	100	109	108
Captive	248 994	246 857	243 995	206 982
Index	100	99	98	83
Free Market	190 505	192 010	235 461	268 386
Index	100	101	124	141

Source: Questionnaire replies and Eurostat

(59) Free market consumption increased by 41 % over the period considered with the most significant part of the increase taking place between 2007 and RIP. Concerning the captive market, consumption decreased by 17 %.

2. Imports from the USA

Volume, price and market share of dumped imports from the country concerned

(60) The volume of imports of the product concerned into the Union from the USA decreased by 16 % over the period considered. Nevertheless, a slight increase of imports has been observed from 2007 to the RIP. In sum the US producers did not increase their exports to the EU because of (i) operational problems (the material impact of hurricanes upon US production and exports) and the consequent need to satisfy the US domestic market and (ii) the tightening of the global supply/demand instrumented by production failures in other parts of the world and enhanced business opportunities to shift raw material used for ethanolamines to the production of MEG. Furthermore, during the period considered one US producer almost halted its exports to the EU thus contributing to the observed decrease. It should be also noted that considerable part of imports from the USA during the RIP were not dumped.

Imports (in tonnes)	2005	2006	2007	RIP
Product concerned	44 912	39 641	35 892	37 583
Index	100	88	80	84

Source: Questionnaire replies and Eurostat

(61) The average import price increased steadily throughout the period considered. Overall, the average import price from the USA was always lower than the average prices of the Union industry.

Average import price per tonne (in EUR)	2005	2006	2007	RIP
Product concerned	825	974	1 000	1 114
Index	100	118	121	135

Source: Questionnaire replies and Eurostat

(62) The market share of imports from the USA decreased by 9,6 percentage points during the period considered. This again is attributed to the problems outlined above in recital 60.

US market share	2005	2006	2007	RIP
Product concerned	23,6 %	20,6 %	15,2 %	14 %
Index	100	88	65	59

Source: Questionnaire replies and Eurostat

Undercutting

(63) For the purpose of analysing price undercutting, the import prices of the two cooperating exporting producers charged to independent customers were compared to the Union industry prices, on the basis of weighted averages for comparable product types during the RIP. The Union industry prices were adjusted to an ex-works level, and compared to CIF Union frontier import prices that included all types of customs duties. This price comparison was made for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts.

(64) On the basis of the above methodology no price undercutting of the Union industry sales prices was found.

3. **Imports from other third countries**

(65) Imports from other third countries increased steadily during the period considered with their peak being 2007 and showed a decreasing tendency between 2007 and the RIP. Nevertheless, during the period considered, they always remained significantly below those of the USA. The main other exporting countries are Russia, Mexico, Iran and Taiwan. Apart from Russia, that has a steady increase of exports, all the remaining countries present an incoherent evolution of exports with increases and decreases of quantities from year to year.

Imports from other countries	2005	2006	2007	RIP
Tonnes	7 862	16 021	23 086	19 644
Index	100	204	294	250
Market Share	4,1 %	8,3 %	9,8 %	7,3 %
Index	100	202	238	177
Import price EUR/tonne	1 215	1 177	1 402	1 459
Index	100	97	115	120

Source: Eurostat

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

(66) It is recalled that the industry also produces for captive use. The following indicators have been established on the basis of both free market sales and captive use: stocks, production, capacity, capacity utilisation, investment, return on investment, cash flow, ability to raise capital, employment, productivity and wages. The remaining indicators, notably sales and profit, refer to free market sales. Given the development of the captive market, i.e. that captive consumption is broadly in line with the development of sales of the free market, the findings concerning the captive market can be extrapolated.

Production, capacity and capacity utilisation

(67) During the period considered, the Union industry's production and capacity increased gradually by 13 %. Capacity utilisation of the Union industry remained stable at a high level just below 90 %. According to the available information, this level of capacity utilisation is close to the maximum level for the industry concerned. The parallel increase in production and capacity, which stayed in any event lower than the increasing Union consumption, confirms that the Union industry was able to profit from the existing measures and to benefit from the increase in demand of the product concerned (attributed to the growing demand in the various downstream industries using ethanolamines).

	2005	2006	2007	RIP
Production (tonnes)	375 119	371 688	407 744	424 526
Index	100	99	109	113
Capacity (tonnes)	424 000	432 000	458 000	477 000
Index	100	102	108	113
Capacity utilisation	88 %	86 %	89 %	89 %
Index	100	97	101	101

Source: Questionnaire replies

Stocks

(68) The stocks of the Union industry also increased in line with the overall increase in Union consumption. In any event, this is not considered as a very meaningful indicator because ethanolamine production is customer-specific and mostly based on long term contracts usually concluded towards the end of the calendar year.

	2005	2006	2007	RIP
Stocks (tonnes)	8 906	10 113	9 250	11 097
Index	100	114	104	125

Source: Questionnaire replies

Sales volume, sales price and market share

(69) Sales of the Union industry increased significantly throughout the period considered (up by 54 %). Nevertheless, given the parallel important increase in the free market Union consumption, the increase in market share of the Union industry was relatively modest (increased by 6,4 percentage points) during the period considered. These trends confirm that the Union industry was in position to benefit from the measures in place. The average unit price of the Union industry's own production increased by 31 % in the period considered. This situation reflects the substantial increase in prices of raw materials used to manufacture ethanolamines but also an increased profitability, in particular in the RIP.

(70) The observed increase in Union industry's sales prices is also in line with the worldwide increase of prices in the ethanolamine world market. This phenomenon is attributed to a series of extraordinary and temporary events that took effect during the period considered and in particular from 2007 to the RIP. On the one hand, costs for raw materials (EO, mainly a petrol-based derivative and ammonia) have increased significantly during this period. On the other hand, the world market has seen a significant tightening of the global supply/demand balance during the same period. This was the result of different factors such as: problems in the US production and exports caused by hurricanes, production difficulties in Asia, a strong surge in demand for downstream products (agrochemicals and more precisely glyphosate) that use ethanolamines as raw material, and problems in the manufacturing of products (in particular MEG) using the same raw materials as for the production of ethanolamines that led producers manufacturing both MEG and ethanolamines to shift temporarily to the former.

Sales in the Union of the like product in free market consumption	2005	2006	2007	RIP
Volume (tonnes)	132 003	130 575	169 403	203 090
Index	100	99	128	154
Average sales price (EUR/tonne)	1 044	1 141	1 189	1 366
Index	100	109	114	131
Market share	69 %	68 %	72,9 %	76,6 %
Index	100	98	106	111

Source: Questionnaire replies

Profitability

(71) Over the period considered the Union industry enhanced significantly its profitability. This improvement is to be seen in the context of: worldwide increase in ethanolamine prices, the decision of one US producer to almost halt its exports to the EU, which contributed to the decrease of imports from the USA, and an increasing demand of ethanolamines both in the Union and worldwide. The latter had as consequence an increase in sales volumes as well as an increase in sales price levels that were, by the end of the RIP, more prominent than the corresponding increases in the cost of production.

	2005	2006	2007	RIP
Profitability Union industry	10,1 %	16 %	15,8 %	21,9 %
Index	100	159	157	217

Source: Questionnaire replies

Investment, return on investment, cash flow and the ability to raise capital

(72) The level of investments shows a non-linear evolution during the period considered. The investments were, on the one hand, necessary for the maintenance of their manufacturing sites plans and, on the other hand, for moderate capacity additions in order to take advantage of the increase in consumption and to satisfy export needs. The return on investment, expressed in terms of net profits of the Union industry and the net book value of its investments, shows a significant improving trend in the period considered. The Union industry's cash flow also shows a substantial improvement in the period considered.

	2005	2006	2007	RIP
Investments (EUR)	980 213	6 396 684	1 505 707	2 454 173
Index	100	654	154	250
Return on net assets	45 %	54 %	55 %	87 %
Index	100	121	123	195
Cash flow (EUR)	22 831 675	34 807 468	36 971 471	55 859 958
Index	100	152	162	245

Source: Questionnaire replies

Employment, productivity and wages

(73) The Union industry's number of employees involved in the production of the like product increased modestly during the period considered. The Union industry was able to control the evolution of the average labour cost per employee during the period considered. Productivity, expressed in terms of output per worker, slightly improved in the same period. The evolution in labour costs and productivity had a positive impact in keeping firm control over the production cost and helped the improvement of profit results.

	2005	2006	2007	RIP
Employment	100	104	104	110
Index	100	103	104	110
Productivity (in tonnes per worker)	3 749	3 591	3 916	3 858
Index	100	96	104	103
Average labour cost per worker (in EUR)	2 389	2 629	2 449	2 262
Index	100	110	103	95

Source: Questionnaire replies

Magnitude of dumping

(74) Dumping continued during the RIP, even if at levels lower than established in the previous review investigation.

Recovery from past dumping

(75) As demonstrated above, the Union industry has had the chance to recover from past dumping in particular in terms of profitability, sales and market share.

(76) The Union industry's export volumes to third countries increased by 21 % during the period considered. This significant amelioration started from 2007 and continued up to the RIP and was mainly attributed to the surge in demand for ethanolamines in the Asian markets due to production difficulties that occurred in these particular markets during the same period. Export sales prices have followed a similar pattern as Union prices. This situation is again attributed to the fact that the period between 2007 and the RIP has been characterised by a significant tightening of the global supply/demand balance.

	2005	2006	2007	RIP
Union industry's export volume (in tonnes)	18 308	14 055	22 746	22 228
Index	100	77	124	121
Export sales price	1 223	1 293	1 241	1 689
Index	100	106	101	138

Source: Questionnaire replies

5. **Conclusion on the situation on the Union market**

(77) The volume of ethanolamines consumed on the Union market expanded by 41 % while imports from the USA declined by 16 % over the period considered. At the same time, the Union industry increased its sales volume and its corresponding market share.

(78) The economic situation of the Union industry improved during the period considered. The relevant injury indicators describe a good state of play in terms of business performance. The Union industry was working at high capacity, achieving significant profit margins, maintaining a stable cash flow, increasing investments and keeping labour cost under control. Furthermore, the Union industry was able to benefit from a series of exceptional events that took effect during the period between 2007 and the RIP that brought prices up and influenced positively its business performance.

(79) To conclude, in view of the positive development of the indicators pertaining to the Union industry, it could not be established that material injury has continued. Therefore, it was examined whether there is a likelihood of recurrence of injury should measures be allowed to expire.

F. **LIKELIHOOD OF A RECURRENCE OF INJURY**

Summary of the analysis of the likelihood of the continuation of dumping and the recurrence of injurious dumping

(80) It is recalled that continuation of dumping during the RIP was established for two US exporting producers. One of the two dumping exporters did not cooperate. In view of the fact that it is subject to the highest anti-dumping measures while at the same time being a major producer in the US market, it would have the highest incentive to return to the Union market, if measures were terminated.

Likelihood analysis in relation to the facts established for the RIP

(81) As set out in more detail in section C, the investigation has established a number of factors which point to the likelihood of a substantial increase of dumped imports from the USA if measures were to be repealed. These factors are notably:

— US producers' spare capacity of 60 000 tonnes, which is not expected to be absorbed in the near future;

— expected self-sufficiency of traditional US export markets, thus forcing US producers to shift exports to the Union. This is notably true for the export markets in Latin America and Asia ([1]). It is recalled that the Asian markets play an important role in the US producers' ability to dispose their surpluses of ethanolamines;

— Chinese anti-dumping duties imposed on two out of three product types against a number of countries, including the USA;

— pressure of increased production due to a shift from MEG to ethanolamine production. Overcapacity and low prices in the MEG business will push producers to favour ethanolamine rather than MEG production, thus creating new ethanolamine capacities and putting pressure on prices;

— the development of ethanolamine demand in the USA is projected to be lower than in other parts of the world, including the Union;

— the average growth rate in demand in the Union is expected to be higher than the one in the USA thus providing a further incentive to the US exporting producers to target their exports to the Union;

— the available information concerning one non-cooperating US producer points to the conclusion that even companies that did not cooperate with the investigation and have minimised their exports to the Union are still very much interested in staying in the EU market and enhancing their export activities.

(82) Account taken of the above, the US producers will have to find additional clients and the most feasible option for them would be to resort to the Union market.

([1]) Tecnon OrbiChem publication, 17 March 2009.

(83) During the RIP, the Union industry was doing well. The reason for this can be found in the strong demand for the product concerned that exceeded the offer. Nevertheless, any increase in imports of the already dumped ethanolamines originating in the USA would put considerable pressure on the Union industry and undermine its performance.

(84) It is also noted that ethalonamines are a commodity, i.e. the various product types are produced to certain technical standards and products from one source can easily be substituted by products from another source. Thus, in a market characterised by oversupply, competition will mainly be on the basis of price.

(85) Against this backdrop, the combination of factors described above can relatively quickly put in danger the strong demand in ethanolamines and lead to a situation of oversupply in the Union market. An increase of dumped imports would exercise a downward pressure on the sales price level and would, in turn, negatively affect the Union industry's performance-related indictors, notably profitability. In case increased dumping were to occur, price undercutting would be established.

Effect of the current economic crisis

(86) The likelihood of a recurrence of injury as described in the previous section is exacerbated by the fact that the ethalonamine market has changed following the economic crisis that came to the fore in autumn 2008. Many key parameters have changed considerably, both as far as exports and the situation of the Union industry are concerned. As explained above, available information suggests that there is a strong build-up of dumped imports post RIP due to the fact that US price levels for two product types are above European price levels while the price differential for the third type is quickly vanishing. In this line, Eurostat data show that during the second quarter of 2009 imports from the USA (i.e. 15 052 tonnes) arrived into the Union 20 % cheaper than during the RIP.

(87) Without any measures, these increased dumped imports would confront a Union industry that is considerably weakened. Indeed, public available information collected in the course of the investigation point to reduced demand, sales and economies of scale, idle production capacity, decreasing financial performance, etc ([2]). Due to the current economic crisis, the Union ethanolamine market faced weak demand. Union industry producers were therefore forced to reduce their outputs.

([2]) Tecnon OrbiChem publication, 14 August 2009; ICIS publication, 15 April and 19 April 2009; PCI, November 2008 to July 2009 issues.

(88) Union industry is currently operating at a capacity utilisation level of 70 %, i.e. much lower than the RIP period level of almost full capacity. Furthermore, the volume of sales of the Union industry has fallen by approximately 30 % while at the same time sales prices have fallen post RIP by 35-40 %. At the same time the post RIP evolution of cost of production and profitability reveals that there seems to be a serious imbalance between raw material cost and ethanolamine prices thus further undermining the financial performance of the Union industry. Indeed, the cost of the two main raw materials used in ethanolamine production (ethylene and ammonia) has decreased over the post RIP period by materially less than the fall in ethanolamine prices. This has led to a serious loss in the profit margins of the Union industry which is currently observing either losses or single digit profit margins.

(89) In other words, the Union industry is no longer in a seemingly robust situation, but in a situation where pressure from dumped imports will more than likely set into motion a dangerous downward spiral which will by far exceed the one found likely on the basis of the RIP data.

(90) The above economic situation has reduced the Union industry's business options. On the one hand, the Union industry would not be in a position to expand its customer base in the EU account taken of the fact that no indication exists that its main competitors in the Union market (i.e. the US producers) have stopped exporting to the EU. On the other hand, it also seems not possible to ease pressure on the Union industry by output increases in captive use as no indication exists that the economic prospects of downstream products (like ethyleneamines, herbicides and catalysts) could outweigh the pressure on the ethanolamine market.

Conclusion on the likelihood of recurrence of injury

(91) In the case measures were repealed, there is strong likelihood of a significant increase of dumped US imports to the Union that could only lead to a recurrence of injury. US producers are loosing traditional markets while the MEG oversupply would lead to an increase in the ethanolamine production that would have to be sold in other markets than the US. Moreover, the economic crisis has affected the Union industry which is facing pressure from the existing US dumped imports without having any viable alternative solution to address injurious dumping other than via the continuation of anti-dumping duties. No indication was found that would lead to the conclusion that this situation will not be exacerbated, should measures be allowed to expiry.

G. **UNION INTEREST**

1. **Preliminary remark**

(92) In accordance with Article 21 of the basic Regulation, it was examined whether maintaining the anti-dumping measures currently in force would be against the interest of the Union as a whole. The determination of Union interest was based on an appreciation of all the various interests involved, i.e. those of the Union industry, importers, traders, wholesalers and industrial users of the product concerned.

(93) It should be recalled that, in the previous investigations, the imposition of measures was not considered to be against the Union interest. Furthermore, the present investigation is an expiry review, thus analysing a situation in which anti-dumping measures are in place.

(94) On this basis it was examined whether, despite the conclusion on the likelihood of a continuation of dumping and likelihood of recurrence of injury, compelling reasons exist which would lead to the conclusion, in this particular case, that it is not in the Union interest to maintain measures.

2. **Interest of the Union industry**

(95) It is recalled that dumping during the RIP was still present and that there exists a likelihood of continuation of dumping of the product concerned originating in the USA and of recurrence of injury to the Union industry.

(96) The Union industry has proven to be a viable and competitive industry, confirmed by the positive development of most economic indicators. The previously imposed anti-dumping measures contributed to restore profitability and allowed for a sufficient return on investment. This could benefit new investments in 2010. Therefore, it is in the interest of the Union industry to maintain measures against dumped imports from the USA.

3. **Interest of importers and traders/wholesalers**

(97) Given the lack of cooperation of any trader and wholesaler, it was concluded that the absence or continuation of measures does not affect these parties to a great extent. Moreover, the investigation did not show the existence of any unrelated importers since all imports into the Union of the product concerned originating in the USA are made via importers related to the US exporting producers.

(98) The continuation of the measures will not change the current situation of the related importers, who were found to have realised profits during the RIP at margins in line with market conditions. In any event, at least in a case like the one at hand, the interests of related importers form an integral part of the interests of the exporting producers since the latter can determine the policy of the related importers. It is recalled that the interests of exporting producers are not part of the Union interest analysis.

4. **Interest of industrial users**

(99) Based on the fact that the continuation of the measures would represent a third renewal of anti-dumping measures, particular attention was paid to the interest of the industrial users.

(100) Only one user belonging to the esterquat business for fabric softeners came forward in this investigation. Esterquats are produced on the basis of TEA and are used as fabric softeners commercialised by companies such as Unilever, Henkel, Colgate Palmolive, Procter & Gamble and Benckiser/Reckitt. The industrial user in question procured during the RIP ethanolamines from both the US and the Union industry. The imports from this industrial user represented a small share of the total US imports (ranging between 15 % and 25 % - the precise figure cannot be disclosed for reasons of confidentiality).

(101) The sole cooperating industrial user argued that Union users are suffering from the anti-dumping measures because they depend on ethanolamine imports as an additional source to cover their EU demand. It also claimed that Union users operate in highly competitive and price sensitive markets with pressure from the downstream producers. They also have to buy raw materials at the lowest price possible in order to minimise costs. Thus, according to this industrial user, any increase of the ethanolamine price is putting its business activities in danger and undermines its profitability. Therefore, this party concluded that the continuation of measures is not in the Union interest since the aforesaid situation would be alleviated if the anti-dumping measures were allowed to lapse.

(102) It was found that, during the RIP, TEA represented an important part (ranging between 20 % to 30 %) of the total cost of production of esterquats for the sole cooperating industrial user. It is clear that the elimination of the anti-dumping measures would, at least in the short term, alleviate the burden placed on this company by the cost of TEA as raw material. Nevertheless, account taken of the fact that this company is procuring very significant amounts of TEA from the Union industry, the final impact of any change in the anti-dumping measures is not expected to be significant for this particular industrial user. In this respect the Commission examined the impact of the current anti-dumping measures on the company's turnover as regards the esterquat business using the US imported ethanolamines. Available data suggest that the overall impact of the anti-dumping duty is moderate (ranging between 1 % and 5 %, precise figure cannot be disclosed for reasons of confidentiality) on the relevant company's turnover. This explains why the company was able to continue its business activities in this sector despite a significant increase in ethalonamine prices up to the RIP and despite the existence of anti-dumping measures. It should also be noted that esterquats represent only a relatively moderate part of the total activities of this industrial user.

(103) The post RIP evolution of TEA prices and their impact to the cost of production of the sole cooperating industrial user was also examined. In this respect it is recalled that prices of ethanolamines have decreased significantly following the RIP. Given the observed price evolution of TEA and the cost structure of the esterquats business, it is considered that the incidence of TEA in the full cost of the finished product has decreased post RIP. On the basis of the available data it appears that, for this particular industrial user, the reduction in the TEA prices could lead to a reduction of TEA cost in the range of 20 % to 25 %. The corresponding effect in the full cost of production of the finished goods would be a reduction in the range of 15 % to 20 %.

(104) The impact of any continuation of the anti-dumping measures on the sole cooperating industrial user was also analyzed by examining its past economic performance, in particular with relation to its profitability and sales. With respect to profitability it was found that, during the period considered, despite the measures in force, the sole cooperating industrial user achieved marginal profitability for products incorporating ethanolamines. With respect to sales it was found that the sole cooperating industrial user significantly increased its export sales for products incorporating ethanolamines while its Union sales slightly decreased. The aforesaid trends applied equally to products produced with ethanolamines originating in the USA or originating in the EU. This situation highlights the fact that the existence of anti-dumping measures did not have any impact to the company's decision making process with respect to sales, thus confirming that the company was able to continue performing successfully without any significant noticeable problems in its sales and profitability. No compelling fact was found to point out that the aforesaid situation would change if anti-dumping measures were prolonged.

(105) Finally, no compelling evidence could be found to substantiate the claim that the tight market for industrial users is directly attributable to shortages in the supply of ethanolamines from the Union industry.

(106) In summary, during the RIP, the effect of the anti-dumping duty on the cooperating industrial user's cost of production of the finished products is rather limited and the abolition of the anti-dumping measures would only have provided a marginal alleviation. Furthermore, the post RIP situation with respect to TEA prices already has a positive impact to the company's cost structure. Therefore, it was decided that a continuation of the measures would not significantly affect the sole cooperating industrial user. Account taken of the fact that no other user cooperated with the investigation and no further relevant information was submitted by any party on this particular matter, it is conduced that the aforesaid analysis should equally apply to all industrial users that might be concerned by the ethanolamine market.

5. **Conclusion on Union interest**

(107) The investigation has shown that the existing anti-dumping measures have contributed to the recovery of the Union industry. The Union industry would benefit from a continuation of the measures by upholding current profitable price levels, allowing for additional investment. If measures were allowed to lapse, this would endanger this recovery process, as described in detail under section F. Therefore, the continuation of measures is in the interest of the Union industry.

(108) Unrelated importers do not seem to exist and unrelated traders/wholesalers did not come forward. All imports originating in the USA are made via related traders, who, while measures were in place, were found to have obtained profit margins during the RIP that were in line with normal market rates.

(109) Furthermore, in the past, the existing measures appear not to have had any significant negative effect on the economic situation of the users. On the basis of the information collected during the current investigation, any price increase, if at all, resulting from the imposition of anti-dumping measures, does not appear to be disproportionate when compared to the benefit of the Union industry achieved by the removal of the trade distortion caused by the dumped imports.

(110) Regarding the Union interest, it is therefore concluded that there are no compelling reasons not to continue imposing the anti-dumping measures currently in force against imports of ethanolamines originating in the USA.

(111) It is therefore considered appropriate to maintain the current anti-dumping measures against imports of ethanolamines originating in the USA.

H. **ANTI-DUMPING MEASURES**

(112) 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 and claims subsequent to disclosure. Relevant representations submitted were analysed but have not led to the alteration of the essential facts and considerations on the basis of which it was decided to maintain the current anti-dumping measures.

(113) The investigation showed that there was a likelihood of continuation of dumping (including a likely increase of the volume of dumped exports) as well as a likelihood of recurrence of injury.

(114) Even taking into account that one of the two cooperating exporting producers was not dumping and (therefore) assuming for the future that its part of imports from the USA will not be dumped, nevertheless the conditions for continuing duties on the basis of 11(2) are complied with.

(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 ethanolamines originating in the USA imposed by Regulation (EC) No 1583/2006 should be maintained.

(116) It is further considered that measures should be maintained for an additional period of two years only. This is based on a number of reasons such as: the existence a likelihood of recurrence of injurious dumping based on the facts that (i) dumping by US exporting producers has continued, notwithstanding the measures in force, and (ii) an expectation of increased imports into the Union due to the existing excess production capacity of 60 000 tonnes in the USA and the lack of corresponding domestic demand capable of absorbing this excess capacity in the USA. Additionally, one of the non-cooperating US producers is currently subject to the highest anti-dumping duty and therefore has the highest incentive to return to the Union market in case the measures lapse. It also has the necessary distribution network at its disposal because it sells other chemical products in the Union market and has given indications that it considers the EU as an important export market.

(117) Moreover, US excess capacity is expected to disappear gradually towards 2013 and there are capacity expansions plans in the Union by the end of 2010. The latter considerations, combined with the uncertainty of the impact of the current world economic crisis on the ethanolamine market (both at worldwide level but even more importantly at Union level), warrant the limitation of the maintenance of the measures to two years,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ethanolamines currently falling within CN codes ex 2922 11 00 (monoethanolamine) (TARIC code 2922 11 00 10), ex 2922 12 00 (diethanolamine) (TARIC code 2922 12 00 10) and 2922 13 10 (triethanolamine), originating in the United States of America.

2. The rate of the definitive anti-dumping duty applicable to the products described in paragraph 1 and manufactured by the companies below shall be as follows:

Company	Anti-dumping duty (EUR per tonne)	TARIC additional code
The Dow Chemical Corporation 2030 Dow Center Midland, Michigan 48674 USA	59,25	A115
INEOS Americas LLC 7770 Rangeline Road Theodore, Alabama 36582 USA	69,40	A145
Huntsman Chemical Corporation 3040 Post Oak Boulevard PO Box 27707 Houston, Texas 77056	111,25	A116
All other companies	111,25	A999

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

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

Article 2

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

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

Done at Brussels, 19 January 2010.

For the Council
The President
E. SALGADO

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