

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1722**of 14 November 2018****amending Implementing Regulation (EU) No 999/2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(3) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

- (1) By Council Regulation (EC) No 2022/95 ⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Pursuant to a further investigation, which established that the duty was being absorbed, the measures were amended by Council Regulation (EC) No 663/98 ⁽³⁾. Following a first expiry review and a first interim review pursuant to Articles 11(2) and 11(3) of Regulation (EC) No 384/96 ⁽⁴⁾ the Council, by Council Regulation (EC) No 658/2002 ⁽⁵⁾, imposed a definitive anti-dumping duty of EUR 47,07 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. That investigation is referred to as 'the 2002 review'.
- (2) Subsequently, a product scope interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 was carried out and, by Council Regulation (EC) No 945/2005 ⁽⁶⁾, a definitive anti-dumping duty ranging between EUR 41,42 per tonne and EUR 47,07 per tonne was imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 20 and originating in Russia.
- (3) Following a second expiry review and a second partial interim review pursuant to Articles 11(2) and 11(3) of Regulation (EC) No 384/96, the Council, by Council Regulation (EC) No 661/2008 ⁽⁷⁾, maintained the measures in force. The duty was left unchanged, except for the EuroChem group, for which the fixed amount of duty ranged between EUR 28,88 and EUR 32,82 per tonne. That investigation is referred to as 'the 2008 review'.
- (4) The European Commission ('the Commission'), by Decision 2008/577/EC ⁽⁸⁾, accepted the undertakings' offers with a quantitative ceiling from the Russian producers JSC Acron and JSC Dorogobuzh, members of the Acron Holding Company and from EuroChem group.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

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

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

⁽⁴⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

⁽⁵⁾ Council Regulation (EC) No 658/2002 of 15 April 2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 102, 18.4.2002, p. 1).

⁽⁶⁾ Council Regulation (EC) No 945/2005 of 21 June 2005 amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in, inter alia, Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ L 160, 23.6.2005, p. 1).

⁽⁷⁾ Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ L 185, 12.7.2008, p. 1).

⁽⁸⁾ Commission Decision 2008/577/EC of 4 July 2008 accepting the undertaking offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Ukraine (OJ L 185, 12.7.2008, p. 43).

- (5) By judgment of 10 September 2008 ⁽¹⁾, interpreted by judgment of 9 July 2009 ⁽²⁾, the General Court annulled Regulation (EC) No 945/2005 in so far as it concerned JSC Kirovo-Chepetsky Khimichesky Kombinat ('Kirovo'), part of OJSC UCC UralChem ('Uralchem'). The Council, by Council Regulation (EC) No 989/2009 ⁽³⁾, amended Regulation (EC) No 661/2008 accordingly. Consequently, for the company Kirovo the anti-dumping duty (EUR 47,07 per tonne) applies only to imports of ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90.
- (6) By Decision 2012/629/EU ⁽⁴⁾, the Commission withdrew its acceptance of the undertaking offered by the EuroChem Group because of the impracticability of the undertaking.
- (7) Following a third expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 ⁽⁵⁾, the Commission, by Commission Implementing Regulation (EU) No 999/2014 ⁽⁶⁾, maintained the measures in force. That investigation is referred to as 'the last expiry review'.
- (8) Commission Implementing Regulation (EU) 2016/226 ⁽⁷⁾ amending Implementing Regulation (EU) No 999/2014 addressed the restructuring of Kirovo as a branch of Uralchem.
- (9) The Commission, by Commission Implementing Regulation (EU) 2016/415 ⁽⁸⁾, withdrew the acceptance of the undertaking for the Acron Holding Company due to the impracticability of the undertaking.
- (10) The measures currently in force take form of a fixed duty per tonne and are based on the injury margin, except for EuroChem. The level was set for EuroChem in the 2008 review based on the dumping margin.

1.2. Request for a partial interim review

- (11) The Commission received a request for a partial interim review ('review request') pursuant to Article 11(3) of the basic Regulation from the following eight European farmers associations (the 'Applicant'): Association Générale des Producteurs de Blé et autres céréales ('AGPB', France), Confederazione Italiana Agricoltori ('CIA', Italy), Confagricoltura (Italy), Coop de France (France), Irish Farmers' Association ('IFA', Ireland), Office of Finnish Agriculture ('MTK', Finland), National Farmers' Union ('NFU', UK), and Unión de Pequeños Agricultores y Ganaderos ('UPA', Spain). The request was limited in scope to the examination of injury. The Applicant argued that Union farmers, as users of ammonium nitrate, are suffering from the anti-dumping measures that have been in place for more than 20 years, and that the injury situation of the Union industry should be reviewed due to lasting changes.
- (12) Separately, the Applicant also called on the Commission to immediately suspend the measures pursuant to Article 14(4) of the basic Regulation.

1.3. Initiation of a partial interim review

- (13) Having determined, after informing the Member States, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 17 August 2017, by a notice published in the *Official Journal of the European Union* ⁽⁹⁾ ('Notice of Initiation'), the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of injury.

⁽¹⁾ Case T-348/05.

⁽²⁾ Case T-348/05 INTP.

⁽³⁾ Council Regulation (EC) No 989/2009 of 19 October 2009 amending Regulation (EC) No 661/2008, imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 278, 23.10.2009, p. 1).

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

⁽⁵⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

⁽⁶⁾ Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 280, 24.9.2014, p. 19).

⁽⁷⁾ Commission Implementing Regulation (EU) 2016/226 of 17 February 2016 amending Implementing Regulation (EU) No 999/2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 41, 18.2.2016, p. 13).

⁽⁸⁾ Commission Implementing Regulation (EU) 2016/415 of 21 March 2016 withdrawing the acceptance of the undertaking for two exporting producers and repealing Decision 2008/577/EC accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia (OJ L 75, 22.3.2016, p. 10).

⁽⁹⁾ Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia (OJ C 271, 17.8.2017, p. 15).

- (14) On the same day, the Commission announced, by way of a Notice of Initiation ⁽¹⁾, the initiation of another partial review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia, limited to the examination of dumping pursuant to Article 11(3) of the basic Regulation.

1.4. Investigation

1.4.1. Review investigation period and period considered

- (15) The review investigation period ('RIP') covered the period from 1 July 2016 to 30 June 2017. The examination of trends relevant for the assessment covered the period from 1 January 2014 to the end of the RIP ('the period considered').

1.4.2. Interested parties

- (16) In the Notice of Initiation, the Commission invited interested parties to participate in the investigation. In addition, the Commission specifically informed the Applicant, the Union industry (producers and their associations), exporting producers and their association, the authorities of the exporting country and known possible unrelated importers about the initiation of the partial interim review investigation and invited them to participate.
- (17) Interested parties were given the opportunity to make their views known in writing and to be heard.
- (18) Hearings with the Commission services were organized for the Applicant, the Union producers association Fertilizers Europe, one individual Union producer, and one individual Russian producer.
- (19) In addition, during the investigation various interested parties made written submissions, including the Applicant, Fertilizers Europe, the Union farmers' association COPA-COGECA ⁽²⁾ and Russian association of fertilizers producers ('RFPA').
- (20) The Applicant submitted on 25 April 2018 that the Commission should disregard some elements provided by Fertilizers Europe due to the timing of their submissions. Since the investigation was ongoing and the Commission had not set a strict deadline for final submission from all parties, this claim was rejected.

1.4.3. Sampling

- (21) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.4.3.1. Sample of Union producers

- (22) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked Union producers to provide the information specified in the Notice of Initiation. The sampling form was sent to 38 entities, including the 11 known associations of Union producers. The Commission received sampling information from 12 Union companies or groups.
- (23) The Commission provisionally selected the sample on the basis of production in the Union and sales volumes on the Union market of the like product during the RIP, and of the sample selected in the last expiry review. The provisional sample consisted of four Union producers located in France, Lithuania, Poland and the United Kingdom ⁽³⁾.
- (24) However, following comments from interested parties the Commission found it appropriate to replace the Polish company with a company from Bulgaria ⁽⁴⁾ and add one company from the Netherlands ⁽⁵⁾.
- (25) The finally selected sample was thus comprised of five companies from five countries and represented around 40 % of the total production of the cooperating companies. Therefore, the sample is representative of the Union industry.

⁽¹⁾ Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia (OJ C 271, 17.8.2017, p. 9).

⁽²⁾ Committee of Professional Agricultural Organisations in the EU (COPA) / General Confederation of Agricultural Co-operatives in the EU (COGECA).

⁽³⁾ AB Achema, Grupa Azoty Zakłady Azotowe, CF Fertilisers UK Limited and Yara France.

⁽⁴⁾ Neochim PLC., related to the Borealis group.

⁽⁵⁾ Yara Sluiskil B.V. By contrast to Yara France, Yara Sluiskil B.V. has ammonia production on site.

1.4.3.2. Sample of Russian exporting producers

- (26) While this partial interim review does not cover dumping aspects, the Commission considered it appropriate to gather information from Russian exporting producers, such as about their production, capacity, Union sales and sales to third countries, to inform the injury assessment.
- (27) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in Russia to provide the information specified in the Notice of Initiation. In addition, it informed the Permanent Mission of Russia to the Union and the Russian association RPPA.
- (28) Six Russian producers provided the requested information. As only two producers exported to the Union, no sampling was necessary. The two Russian companies correspond to 38 % of the production of the cooperating Russian companies.
- (29) The Russian exporting group Acron, which requested the initiation of a parallel interim review limited to dumping ⁽¹⁾, did not fill in the sampling form. The company nonetheless provided limited information in the course of the investigation in the form of a partial reply to the questionnaire. Part of the data submitted was not the accurate information as updated following verification in the parallel investigation and could not be used.

1.4.3.3. Sample of unrelated importers

- (30) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. However, no unrelated importer replied.

1.4.4. Replies to questionnaires

- (31) The Commission sent questionnaires to the five sampled Union producers and the two Russian exporting producers, and received replies from all.
- (32) It also gathered information from farmers' associations by sending a questionnaire to the Applicant in this investigation and other farmers' associations that had made themselves known as interested parties ⁽²⁾. The Commission received replies from the Irish Farmers' Association, the UK farmers' association NFU, and a consolidated reply from the Applicant on behalf of associations active in 15 Member States ⁽³⁾. The Lithuanian farmers' association later clarified that it did not take a view on the ongoing investigation.

1.4.5. Verification visits

- (33) The Commission sought and verified all the information deemed necessary for the investigation. Verification visits under Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) Union producers

- AB Achema;
- CF Fertilisers UK Limited;
- Neochim PLC;
- Yara France;
- Yara Sluiskil B.V.

(b) Cooperating exporting producers in Russia

- PJSC KuibyshevAzot;
- Uralchem JSC, as well as related importer Uralchem Trading SIA in Latvia.

⁽¹⁾ Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia (OJ C 271, 17.8.2017, p. 9).

⁽²⁾ More than 20 European farmers associations have asked to be interested parties.

⁽³⁾ Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Spain, and the UK.

1.4.6. Disclosure

- (34) On 31 August 2018, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to propose to amend the duty rate applicable. Interested parties were given the opportunity to comment by 12 September 2018, and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (35) Nine entities, including European farmers associations, Union producers, the Union producers association Fertilizers Europe, and the Russian association RFPA submitted comments on disclosure. Upon request, hearings were held with the Applicant, Grupa Azoty S.A. and Agropolychim AD, and RFPA.
- (36) Comments were duly taken into consideration where warranted.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (37) The product concerned is solid fertilizers with an ammonium nitrate content exceeding 80 % by weight, currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 20 and originating in Russia ('the product concerned'). However, with regard to ammonium nitrate produced by the Kirovo branch of the Uralchem group, only ammonium nitrate currently falling within CN codes 3102 30 90 and 3102 40 90 is the product concerned pursuant to Regulation (EC) No 989/2009.
- (38) Originally, the product concerned was defined as ammonium nitrate but was subsequently re-defined to solid fertilizers with specified ammonium nitrate content. This was the consequence of the product scope clarification in 2005 ⁽¹⁾ which aimed to cover also ammonium nitrate to which were added phosphorus and/or potassium nutrients (so-called 'dirty' or 'stabilized' ammonium nitrate, hereinafter referred to as 'dirty AN'), since it was found out that these mixtures had essentially the same basic physical and chemical characteristics and the same agronomic properties. The product is commonly referred to as ammonium nitrate ('AN').
- (39) As set out in section 1.1, for the company Kirovo the anti-dumping duty (EUR 47,07 per tonne) applies only to imports of AN currently falling within CN codes 3102 30 90 and 3102 40 90.
- (40) AN is a solid nitrogen fertiliser commonly used in agriculture, but is also used for industrial purposes such as the production of explosives (for instance used in mining). AN used both for agricultural and for explosive purposes is covered by the anti-dumping measures in force. Both types of AN have the same technical and chemical characteristics, are easily interchangeable and are considered as the product concerned.
- (41) In farming, AN is used, among others, for cereal crops, such as wheat. The use of AN is restricted in several Member States due to its explosive properties. For instance, in Ireland, farmers use calcium ammonium nitrate ('CAN').
- (42) The main raw material used in the production of AN is natural gas, which accounts for a large majority of the total costs of production.
- (43) The conventional rate of duty for AN is 6,5 % ⁽²⁾.

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

⁽²⁾ See Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 294, 28.10.2016, p. 1) and Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1).

2.2. Like product

- (44) As in the previous investigations described in section 1.1, the Commission found that the following products have the same basic physical and chemical characteristics: (a) the product concerned; (b) the AN produced and sold on the domestic Russian market and other export markets; and (c) the AN produced and sold in the Union by the Union industry.
- (45) The Commission therefore concluded that those products are like products for the purposes of this investigation within the meaning of Article 1(4) of the basic Regulation.

3. LASTING NATURE OF THE CHANGED CIRCUMSTANCES

- (46) In accordance with Article 11(3) of the basic Regulation, the Commission examined whether the circumstances on the basis of which the current measures were established have changed and whether such change was of a lasting nature.

3.1. Restructuring

- (47) The level of concentration of the Union industry has increased due to numerous mergers and acquisitions. Several Union producers such as Yara International ASA ('Yara') from Norway and Borealis Agrolinz Melamine GmbH ('Borealis') from Austria are global players. Since 2002, mergers and acquisitions have for instance involved the following companies ⁽¹⁾: Anwil SA, Azomures, BASF SE, Borealis, Fertiberia S.A., CF Fertilisers UK Limited, Yara, and Grupa Azoty S.A.
- (48) The Applicant claimed that the Union industry is now capable of competing with Russian imports due to greater efficiencies gained from investment and restructuring, by contrast with the situation in the 2002 review with dozens of small and medium size producers operating independently. The Union industry submitted that the Union market competition is healthy as there are more than 10 producers in the Union and none has a share of more than 20 %. ⁽²⁾
- (49) Based on data received from cooperating Union producers, four large groups (Yara, CF, Borealis and EuroChem) account for nearly 6 out of 8 million metric tonnes of Union production of AN. Accordingly, the Union production of AN is now dominated by a few large corporate groups of significant scale.
- (50) In order to assess the impact of a consolidation process involving so many companies over more than 15 years, the Commission analysed the evolution of the Community industry as defined in the 2002 review.
- (51) In the 2002 review, four companies had been visited: Grande Paroisse (France), Kemira Ince (UK), Terra Nitrogen (UK), and Hydro Agri France. As the Grand Paroisse ammonium nitrate plant exploded in 2001, causing several deaths in France, the Commission eliminated this company from the analysis.
- (52) First, the two UK companies now belong to the same company, CF Fertilizers UK Limited, part of the US group CF Industries ('CF'). In 2007 the two companies were formed a Joint Venture. In its report on the deal ⁽³⁾, the UK competition authority noted that *'the parties submitted that neither of them is currently making, or projected to make, acceptable levels of return from their UK fertiliser businesses. The rationale for the proposed joint venture, therefore, is to establish a viable long term UK-based manufacturer of nitrogen fertilisers by creating a larger business with a lower cost base than either party is currently able to achieve independently'*. Then, CF acquired Terra Industries in 2010, expecting the deal to lead to global annual cost synergies of up to USD 135 million ⁽⁴⁾. In its 2011 annual report, CF confirmed that it was able to *'capture synergies beyond those anticipated at the time of the acquisition'*. ⁽⁵⁾ As the UK business was still a Joint Venture at that time, CF later took full control in 2015. The *'deal thesis [was to i]ncrease*

⁽¹⁾ This includes companies that became Union producers following the 2004, 2007 and 2013 accessions.

⁽²⁾ Fertilizers Europe hearing slides of 21 November 2017.

⁽³⁾ Office of Fair Trading report <https://assets.publishing.service.gov.uk/media/555de39fe5274a74ca0000af/Kemira.pdf>

⁽⁴⁾ <https://www.ft.com/content/7683d0ce-2dad-11df-a971-00144feabdc0>

⁽⁵⁾ <http://www.snل.com/Cache/25347763.PDF?O=PDF&T=&Y=&D=&FID=25347763&iid=4533245>

production by 10 % without any incremental capex'.⁽¹⁾ In its 2017 annual report⁽²⁾, CF summarized the deal results as follows: 'Following the acquisition and assumption of full operating control of CF Fertilisers UK, we have increased asset utilization by nearly 20 percent while delivering synergies in excess of \$35 million annually'. CF Fertilizers UK Limited is now part of a group of 3 000 employees that is a 'leading global fertilizer and chemical company with outstanding operational capabilities and a highly cost-advantaged production and distribution platform'.

- (53) Second, Hydro Agri France was part of Hydro Agri, a subsidiary of the Norwegian group Norsk Hydro that was spun off in 2004 to become Yara. The Yara group employs more than 15 000 employees and has revenues of around EUR 10 billion.⁽³⁾ According to its 'Fertilizer Industry Handbook 2017'⁽⁴⁾, Yara was the 'leading nitrogen fertilizer company' and 'the global no. 1 producer of nitrates and NPK, and global no. 2 producer of ammonia', excluding Chinese producers. Yara stated that 'Yara's position gives it unique opportunities to leverage economies of scale and drive best practice across a large network of plants. Scale and global reach are key drivers for Yara's competitive edge'. Moreover, 'Yara has a market share of around 20 % of global ammonia trade. This leading position gives the company a good overview of the global supply / demand balance of ammonia and enables a better optimization of its global product flows'.
- (54) As for the other five companies that were not visited in the 2002 review but were part of the Community industry, two were also part of Hydro Agri and one part of Kemira (Belgium) which eventually is now part of the Yara group.
- (55) Furthermore, in 2012 Russian group EuroChem completed its acquisition of BASF's fertilizer assets.⁽⁵⁾ In its 2012 annual report EuroChem noted that 'the integration of these businesses [EuroChem Antwerpen and EuroChem Agro in 2012] is ongoing, but today we can safely say that it has been a strategic success. The operational synergies and cultural fit have resulted in strong relationships that have had a positive impact on the group as a whole'.⁽⁶⁾ The EuroChem group has more than 25 000 employees, more than USD 4 billion of global revenues, and benefits from its vertically integrated business model.⁽⁷⁾
- (56) Finally, the Spanish Fertiberia group bought Adubos do Portugal in 2009, and has various other subsidiaries in France and Algeria. According to Fertiberia, 'the consolidation of the group as a leading company has been mainly based on the creation and acquisition of strategically placed subsidiary companies. This commercialisation model has enabled greater commercial, productive and logistical efficacy, which are key aspects in such a competitive market'.⁽⁸⁾ More specifically concerning Adubos do Portugal, in its 2014 annual report, Fertiberia noted that 'consolidation of the operative integration of ADP Fertilizantes into our group is also of particular note, harnessing new synergies that have enabled this company to boost EBITDA to 18 million euros' and 'these synergies extend from the supply of raw materials and smooth-running of its facilities, to building extensive market knowledge in order to strengthen its bid for high added-value products'.⁽⁹⁾
- (57) It follows from the above public statements that the mergers lead, among others, to the lowering of costs (UK), economies of scale (Yara), operational synergies (EuroChem) and logistical efficacy (Fertiberia). Therefore, efficiency gains were observed in all AN producers of the then-Community industry. These included an increase in purchasing power and the possibility to optimise production and sales process. At the same time, the Union industry enlarged through the 2004, 2007 and 2013 accessions, making an overall cost comparison for each company impossible. However, as mentioned in recital (47), also several companies from the accession countries took part in the restructuring process.
- (58) The Commission concluded that the Union industry is more concentrated than in the 2002 review, that this consolidation is of a lasting nature, and that it had a beneficial impact on the overall cost structure.

(1) CF Industries Fall/Winter 2016 Investor Presentation <https://www.sn1.com/Cache/1500093371.PDF?O=PDF&T=&Y=&D=&FID=1500093371&iid=4533245>

(2) <https://www.cfindustries.com/globalassets/cf-industries/media/documents/reports/annual-reports/cf-industries-2017-annual-report.pdf>

(3) Yara Annual Report 2017 <https://www.yara.com/siteassets/investors/057-reports-and-presentations/annual-reports/2017/yara-annual-report-2017-web.pdf>

(4) https://www.yara.com/siteassets/investors/057-reports-and-presentations/other/2017/fertilizer_industry_handbook_2017_with_notes.pdf

(5) <http://www.eurochemgroup.com/en/press-releases/eurochem-completes-acquisition-of-basf-fertilizer-assets/>

(6) http://www.eurochemgroup.com/wp-content/uploads/2016/02/EuroChem_Annual_Report_2012_eng12.pdf

(7) http://www.eurochemgroup.com/wp-content/uploads/2016/02/2018_02_08-EuroChem-FY2017-IFRS-Conference-Call-1.pdf

(8) <http://www.grupofertiberia.com/en/structure/>

(9) <http://www.fertiberia.com/media/312748/fertiberia-annual-report-2014.pdf>

- (59) Following the disclosure, two Union producers submitted that EuroChem should not be analysed due to links to a Russian entity, and the inclusion of the UK producer was questionable as the UK would soon leave the Union. The Commission rejected these claims. EuroChem was analysed as part of the then-Community industry and the UK producer was a proper part of the Union industry as the UK is a Member State of the Union at the time of the investigation.
- (60) In addition, these producers submitted that the Commission had not established how the changed circumstance of the restructuring of the Union industry directly impacted the injury calculation. The Commission recalled that it first established the existence of lasting changes affecting the Union industry since the 2002 review, when the level of the measures was last set. Subsequently it assessed the present situation of the Union industry, leading to new injury margin calculations. Those two analyses are carried out distinctively and independent from each other.
- (61) Furthermore, Fertilizers Europe submitted that the changes linked to the restructuring of the Union industry were not significant compared to the Russian gas advantage. The Commission noted that the lasting change found is not about the Russian gas situation, but about the Union industry that consolidated since the 2002 review.

3.2. Cost of gas in the Union market

- (62) The Applicant submitted that gas prices in the Union went up since 2002 until Q2 2013 and then went down significantly since Q3 2013. In its view, while natural gas prices are expected to slightly increase over the next 10 years, they will remain considerably under the levels reached during the last expiry review. For instance, Table 1 shows the World Bank's forecast of natural gas prices for the years 2018 to 2030: ⁽¹⁾

Table 1

Gas price forecast

Commodity Energy	Unit	Forecasts												
		2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2030
Coal, Australia	USD/mt	70,1	57,5	65,9	88,4	85,0	75,0	65,0	64,5	64,0	63,5	63,0	62,4	60,0
Crude oil, avg	USD/bbl	96,2	50,8	42,8	52,8	65,0	65,0	65,4	65,9	66,3	66,8	67,2	67,7	70,0
Natural gas, Europe	USD/ mmbtu	10,1	7,3	4,6	5,6	6,5	6,6	6,7	6,8	7,0	7,1	7,2	7,3	8,0
Natural gas, US	USD/ mmbtu	4,4	2,6	2,5	3,0	3,0	3,1	3,2	3,2	3,3	3,4	3,5	3,6	4,0
Natural gas LNG, Japan	USD/ mmbtu	16,0	10,2	6,9	8,0	8,8	8,9	9,1	9,3	9,4	9,6	9,7	9,9	10,0

Source: World Bank Commodities Price Forecast

- (63) The Russian association RFP submitted the Gazprom forecast of prices until 2021 ⁽²⁾, to support the claim that the decrease of gas prices is of a lasting nature.
- (64) Fertilizers Europe submitted that there has been no change in relation to, among others, dumping and to gas pricing in Russia. ⁽³⁾ Following the disclosure, Fertilizers Europe reiterated statements regarding the gas situation in Russia.

⁽¹⁾ World Bank Commodities Price Forecast, April 2018 <http://pubdocs.worldbank.org/en/458391524495555669/CMO-April-2018-Forecasts.pdf>

⁽²⁾ RFP submission of 2 October 2017.

⁽³⁾ Fertilizers Europe hearing slides of 9 November 2017, of 22 March 2018, and of 12 April 2018.

- (65) The Commission noted that gas is indeed the most important raw material for ammonium nitrate representing over 60 % of the total cost of production. It established that domestic gas prices in Russia are regulated by the State via federal laws and do not reflect normal market conditions, where prices are principally set by production costs and profit expectations.
- (66) The situation concerning domestic gas prices in Russia is only relevant for the establishment of dumping as it only concerns the determination of the normal value. The Commission recalled that this review relates to the injury situation only.
- (67) Following the disclosure, Fertilizers Europe and one Union producer noted that the gas price levels had already increased faster than expected in the World Bank forecast from April 2018 (Table 1 above). The World Bank also changed its forecast in the September 2018 edition.
- (68) The Commission observed that there has been a lot of fluctuation since the 2002 review when the level of measures was fixed. There was a notable decrease between 2014 and 2016, but since then prices are steadily increasing again. This change has been partly reflected in Union producers' cost of production. Since 2014, the cost of production for sampled companies has gone down by over 20 % for the sampled companies. The recent developments in 2018 confirm the significant fluctuation in the gas price level in Europe.
- (69) In principle, changes in domestic raw material prices do not qualify as a change of lasting nature because they are normally the result of volatile market forces. In the Union gas prices are established in an open market. Moreover, there has been no stable trend since 2002. Therefore, the Commission concluded that the changes in the gas prices in the Union cannot be considered as of lasting nature.

3.3. Global market changes

- (70) The Commission also considered that global changes in AN market observed since 2002 are an element relevant to the assessment.
- (71) First, Russian consumption of AN has more than tripled since 2002:
- 2,2 million metric tonnes in the investigation period of the 2002 review ⁽¹⁾;
 - 5,5 million metric tonnes in 2014 ⁽²⁾;
 - 7 million metric tonnes in 2016 ⁽²⁾.
- (72) Moreover, the Russian association RFPA further submitted that in 2017, according to the preliminary figures released by the Russian Ministry of Agriculture, overall domestic consumption of nitrogen fertilizers further increased by 8,7 %. ⁽³⁾ Russian consumption is expected to continue increasing slightly until 2030. ⁽⁴⁾
- (73) Second, the demand of third markets (mainly Latin America and notably Brazil) has increased as well. The Food and Agriculture Organization ('FAO') estimates for Brazil an increase from 0,9 million tonnes in 2002 to 1,5 million tonnes in 2016. ⁽⁵⁾ Beyond AN only, the rising demand in Latin America for nitrogen fertilizers is expected to continue. ⁽⁶⁾
- (74) Meanwhile, the Union-28 agricultural consumption of AN has decreased slightly since 2002. ⁽⁷⁾ Union consumption is expected to remain stable in the future.
- (75) In this context, the Union market is in terms of volume less attractive than in 2002 as well as than in 2014. ⁽⁷⁾

⁽¹⁾ Council Regulation (EC) No 658/2002 of 15 April 2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 102, 18.4.2002, p. 1), recital (37).

⁽²⁾ Data from the International Fertilizers Association submitted by a Russian exporting producer. See RFPA submission of 13 March 2018.

⁽³⁾ RFPA submission of 13 March 2018. Lower estimates had been submitted in the previous RFPA submission of 2 October 2017.

⁽⁴⁾ Review request from the Applicant.

⁽⁵⁾ FAO website accessed in June 2018.

⁽⁶⁾ See for instance the 'Fertilizer Outlook 2017-2021' of the International Fertilizer Association https://www.fertilizer.org/images/Library_Downloads/2017_IFA_Annual_Conference_Marrakech_PIT_AG_Fertilizer_Outlook.pdf or the 'Yara Fertilizer Industry Handbook January 2017' https://www.yara.com/siteassets/investors/057-reports-and-presentations/other/2017/fertilizer-industry-handbook_2017_slides_only.pdf.

⁽⁷⁾ Fertilizers Europe hearing slides of 21 November 2017.

- (76) In addition, the situation in the United States ('US') has evolved since the 2002 review. The US stopped in August 2016 its anti-dumping measures on AN from Russia. This was in the context of the shale gas boom leading to cheaper gas prices for US producers. US shale gas production has increased steeply since 2000, and this production is expected to increase even further in the future. The shale gas boom has led and still leads to the development of capacities of US producers' nitrogen fertilizers.
- (77) Meanwhile, other countries such as Ukraine, Australia and India ⁽¹⁾ have imposed anti-dumping measures on ammonium nitrate, notably from Russia.
- (78) These global changes in AN market are of a lasting nature and can impact the injury situation, including on likelihood of recurrence of injury.

3.4. Conclusion on changes of a lasting nature

- (79) The Commission concluded that two circumstances, the restructuring of the Union industry and the global market for AN, have changed since the 2002 review, and that these changes are of a lasting nature.

4. DEFINITION OF THE UNION INDUSTRY

- (80) The Union industry within the meaning of Article 4(1) of the basic Regulation was defined as the producers of AN in the Union during the period considered.
- (81) As set out in section 1.4, a sample consisting of five companies was selected and data was gathered from the sample and verified on spot. In addition, additional data was submitted by interested parties, notably the Applicant, the Union producers association Fertilizers Europe and the Russian association RFPA. When possible, the Commission also used publicly available data.
- (82) The sample consists of five companies. Figures related to the Union industry are therefore indexed below only when relating to one company.

5. SITUATION OF THE UNION INDUSTRY

5.1. Union consumption

- (83) Union consumption, at 7 to 8 million metric tonnes, showed a stable trend during the period considered, as shown in Table 2:

Table 2

Union consumption (million metric tonnes)

	2014	2015	2016	RIP
Total Union consumption	7,7	8,0	7,8	7,9
Index (2014 = 100)	100	105	102	103

Source: Data from market intelligence source Fertecon

- (84) In addition to this stable trend during the period considered, the Union market for AN is expected to remain overall flat until 2030. ⁽²⁾

⁽¹⁾ See 2018 semi-annual reports of the countries on the WTO website https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

⁽²⁾ Review request from the Applicant. See also Fertecon Nitrates Outlook, quoted in Fertilizers Europe hearing slides of 21 November 2017, and Fertecon data provided in the RFPA submission of 13 March 2018.

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

- (85) The Commission established the volume and the prices of imports from Russia on the basis of data from import statistics collected pursuant to Article 14(6) of the basic Regulation ('the 14(6) database'). The volumes, market share and average prices of the imports from Russia developed as shown in Table 3:

Table 3

Total import volumes and import volumes from Russia (metric tonnes), market share, and import prices from Russia (EUR/tonne)

	2014	2015	2016	RIP
ALL IMPORTS (ALL COUNTRIES)	615 009	732 986	292 839	323 113
IMPORTS FROM RUSSIA	356 456	364 574	118 354	112 025
Index	100	102	33	31
Russian share of imports to Union in volume	58,0 %	49,7 %	40,4 %	34,7 %
Russian market share in volume	4,6 %	4,5 %	1,5 %	1,4 %
Average CIF price	249	222	173	183
Index	100	89	70	73

Source: Data from the 14(6) database

- (86) In the RIP, Russian imports of AN continued to enter the Union and account in the RIP for 0,1 million metric tonnes (around 35 % of all imports, after Georgia).
- (87) Imports from Russia were at a very low level in the RIP and have been sharply decreasing during the period considered. It is noted that the sales of dirty AN by Kirovo, not subject to an anti-dumping duty, constitute the overwhelming majority of Russian exports to the Union in the RIP. Excluding sales by Kirovo of dirty AN, imports from Russia in the RIP amounted to [0 – 50 000] metric tonnes, that is to say a market share of less than 0,5 % of the Union market.
- (88) The market share of Russian imports was 3,1 % in the last expiry review ⁽¹⁾, and in the RIP is estimated at less than 2 %. In the 2002 review, Russian imports accounted for 5 % of Union consumption (before Union enlargement) ⁽²⁾.
- (89) The average import prices of AN imported from Russia decreased during the period considered, during which gas prices also decreased, with gas as the main cost item in the production of AN.

5.3. Price undercutting

5.3.1. Russian export price

- (90) As set out in section 1.4.3.2, the Commission gathered data from the two cooperating Russian exporting producers.
- (91) One exporting producer, PJSC KuibyshevAzot, exported directly to the Union in the form of direct sales of the product concerned. However, those sales to the Union were not representative in view of their quantity ([less than 1 000] metric tonnes ⁽³⁾) and of the sole specific customer at stake.

⁽¹⁾ Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 280, 24.9.2014, p. 19), recital (111).

⁽²⁾ Council Regulation (EC) No 658/2002 of 15 April 2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 102, 18.4.2002, p. 1), recital (48).

⁽³⁾ Questionnaire reply of PJSC KuibyshevAzot.

- (92) The other exporting producer, Uralchem, exported through a related sales office in Latvia. The sales by Uralchem of 'normal' AN in the RIP were also very limited, at [less than 1 000] metric tonnes ⁽¹⁾.

5.3.2. Findings on undercutting from Russia

- (93) Given the low and unrepresentative volumes of the cooperating Russian exporting producers in the RIP as described in section 5.3.1, the Commission could not make a decisive finding on undercutting.
- (94) Following the disclosure, the Applicant and the RFPA argued that the Commission should use data from Table 3 to establish that there was no undercutting in the RIP. The Commission noted that this data includes significant sales of dirty AN and therefore differs from the data regarding AN sales by Union producers. This data was therefore not considered appropriate for an adequate and reliable undercutting calculation.

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

- (95) The volume of imports from other third countries, their market share and prices during the period considered are shown in Table 4.

Table 4

Import volumes (metric tonnes), market shares and import prices (EUR/tonne)

	2014	2015	2016	RIP
ALL IMPORTS (ALL COUNTRIES)	615 009	732 986	292 839	323 113
IMPORTS OF OTHER COUNTRIES THAN RUSSIA	258 553	368 412	174 485	211 088
Index	100	142	67	82
Other countries share of imports to Union in volume	42 %	50 %	60 %	65 %
Other countries market share in volume	3,4 %	4,6 %	2,2 %	2,7 %
Average price (CIF)	263	245	222	207
Index	100	93	84	79

Main other countries	2014	2015	2016	RIP	% of exports in RIP
Georgia	119 570	276 787	119 583	155 867	48,2 %
Turkey	6 142	4 398	10 658	12 861	4,0 %
Serbia	37 691	34 405	2 068	1 556	0,5 %
Egypt	13 549	15 475	7 560	7 822	2,4 %

Source: Eurostat

⁽¹⁾ Questionnaire reply of Azot branch of Uralchem JSC.

- (96) The other relevant exporting countries to the Union were Georgia with 0,15 million metric tonnes in the RIP (about 48 % of all imports), and to a lower extent various countries such as Turkey, Serbia, Egypt, Morocco and Norway. Georgia was the country with the most exports to the Union in the RIP, ahead of Russia. The market share of the other countries, at 2,9 % of the Union market in the RIP, remained broadly stable during the period considered. The overall average prices of imports from other countries decreased in line with the same trend for Russian prices (see section 5.2) and Union prices (see section 5.4.4), in the context of decreasing gas prices in the period considered.

5.4. Economic situation of the Union industry

- (97) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry during the period considered.
- (98) For the purpose of the injury analysis, the economic situation of the Union industry is assessed on the basis of macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, growth, employment and productivity) and microeconomic indicators (average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital). The former are based on data provided in submissions from interested parties and on statistics; they relate with a few exceptions to all known Union producers. The latter are based on data contained in the questionnaire replies from the sampled Union producers and verified during the investigation.
- (99) In the last expiry review, as well as in the 2008 review, the injury indicators were overall positive and the Union industry was not injured. As this investigation is based on a different sample, no trend can be inferred directly from comparing the data in this RIP and this period considered with the last expiry review on some elements.

5.4.1. Production, production capacity and capacity utilisation

- (100) The current expiry review has confirmed the findings of the previous investigations that gathering accurate and reliable data on capacity and production of the product concerned is a complex exercise, notably as liquid ammonium nitrate can be used to produce the solid product but also other downstream products. Statistical distortions can occur due to the existence of multi-purpose plants that can switch quickly production to or from other fertilisers. A low capacity utilisation rate for the product concerned is therefore a less meaningful indicator of the overall economic situation of the Union industry.
- (101) Bearing in mind these caveats, the total Union production, production capacity and capacity utilisation, as well as the same indicators for the sampled companies, developed over the period considered as shown in Table 5:

Table 5

Production, production capacity (million metric tonnes) and capacity utilisation

	2014	2015	2016	RIP
Total				
Production in volume	[7 – 8]	[7 – 8]	[7 – 8]	[7 – 8]
Index	100	95	96	97
Production capacity	[16 – 18]	[16 – 18]	[16 – 18]	[16 – 18]
Index	100	100	101	101
Capacity utilisation	48 %	45 %	45 %	46 %
Sampled companies				
Production in volume sampled companies	3,0	3,0	3,1	3,2
Index	100	101	103	107

	2014	2015	2016	RIP
Production capacity sampled companies	4,9	4,9	4,9	4,9
Index	100	100	100	100
Capacity utilisation sampled companies	62 %	62 %	64 %	66 %
Index	100	100	103	106

Source: Fertecon data (in ranges) for total cross-checked with sampling form replies, and sampled companies questionnaire replies for sampled companies

- (102) Compared with an estimated production of around 10 million metric tonnes in Russia ⁽¹⁾, the production was above 7 million in the Union. The level of production by Union producers is similar to the one in the last expiry review. ⁽²⁾
- (103) Production capacity remained stable over the period considered. Production of the sampled companies went up, resulting in a higher capacity utilisation. For the overall Union industry the capacity utilisation has been stable during the period considered.

5.4.2. Sales volume, market share and growth

- (104) The sales volume on the Union market to unrelated customers, and market share of the total Union industry, developed over the period considered as shown in Table 6:

Table 6

Sales volumes (million metric tonnes) and market share

	2014	2015	2016	RIP
Sales volume on the Union market	7,1	7,3	7,5	7,6
Index	100	104	107	107
Market share	92,0 %	90,9 %	96,3 %	95,9 %
Index	100	99	105	104

Source: Union consumption minus Imports from Russia and other countries as indicated in the tables above

- (105) Sales volumes to unrelated customers have slightly increased during the period considered. For the sampled companies only the data is not meaningful, as there is an apparent increase largely due to the end of a Joint Venture between two sampled companies during the period considered.
- (106) The total Union industry had a market share of more than 90 % in the period considered, as in the 2014 expiry review (92 % in the RIP, 93 % in 2010). In this RIP the Union producers' market share goes up to 96 %. In the original investigation period of 1999-2000, for the 2002 review, the market share was 68 % (based on Union before enlargement).

⁽¹⁾ Based on sampling form replies. This is in line with the Fertecon data quoted in the RFP submission of 13 March 2018 and the estimate in the last expiry review (Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 280, 24.9.2014, p. 19), recital (72)).

⁽²⁾ Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 280, 24.9.2014, p. 19), recitals (120) and (121).

5.4.3. *Employment and productivity*

- (107) Employment and productivity for the five sampled companies developed over the period considered as shown in Table 7:

Table 7

Employment and productivity

	2014	2015	2016	RIP
Number of employees	1 095	1 028	1 044	1 026
Index	100	94	95	94
Productivity (metric tonnes/employee)	2 778	2 989	3 004	3 170
Index	100	108	108	114

Source: Verified questionnaire replies

- (108) Employment remained rather stable throughout the period considered, with a decreasing trend. At the same time, productivity per employee has increased.

5.4.4. *Sales prices and factors affecting domestic prices*

- (109) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as shown in Table 8:

Table 8

Sales prices in the Union and unit cost of production (EUR/tonne)

	2014	2015	2016	RIP
Average ex works unit selling price in the Union	268	270	190	185
Index	100	101	71	69
Unit cost of production	229	224	177	176
Index	100	98	77	77

Source: Verified questionnaire replies

- (110) The unit sales price of the Union industry to unrelated customers in the Union saw a sharp decrease, by 30 %, between 2014 and the RIP. This decrease in sales price is a major trend in the period, with a decrease from EUR 268 per tonne in 2014 to EUR 185 in the RIP. The Applicant claimed that the price should have decreased even more, in line with the decreasing price of gas, which is the main cost item ⁽¹⁾.
- (111) The average unit cost of production has not decreased as sharply as the sales price: from EUR 229 per tonne in 2014 to EUR 176 in the RIP.
- (112) Meanwhile, during the period considered, net sales outside the Union to unrelated parties nearly doubled in volume (to 190 926 metric tonnes), with the unit selling price outside the Union following the same sharp decreasing trend.
- (113) Following the disclosure, the Applicant submitted that AN prices have been rising in the UK and France after the RIP, and that therefore, taking the RIP cost of production, Union producers were in a strong position. The Commission noted that the cost of production is highly influenced by the level of gas price. Therefore, it is not appropriate to compare a selection of sales price from August 2018 with the cost of production of sampled companies during the RIP.

⁽¹⁾ See for instance review request from the Applicant.

- (114) The Applicant also submitted that sales outside the Union showed that Union producers can compete with Russian producers. The Commission's investigation relates to the situation on the Union market. The fact that Russian exporting producers and the Union industry may compete on other third country markets with different market characteristics does not directly relate to that analysis.

5.4.5. Labour costs

- (115) The average labour costs for the sampled companies developed over the period considered as shown in Table 9:

Table 9

Average labour costs per employee

	2014	2015	2016	RIP
Average wages per employee (EUR)	44 715	50 367	47 258	47 818
Index	100	113	106	107

Source: Verified questionnaire replies

- (116) The average labour costs per employee increased during the period considered.

5.4.6. Inventories

- (117) Stock levels of the sampled companies developed over the period considered as shown in Table 10:

Table 10

Inventories

	2014	2015	2016	RIP
Closing stocks (in metric tonnes)	199 106	255 877	133 866	167 203
Index	100	129	67	84
Closing stocks as a percentage of production	7 %	8 %	4 %	5 %
Index	100	127	65	79

Source: Verified questionnaire replies

- (118) The closing stocks fluctuate over the period considered, with an increase between 2014 and 2015, followed by a sharp decrease.

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

- (119) Profitability, cash flow, investments and return on investments of the sampled companies developed over the period considered as shown in Table 11. Triggered by a comment from an interested party upon disclosure, the Commission updated the two rows regarding profitability to account for a technical error.

Table 11

Profitability, cash flow, investments and return on investments

	2014	2015	2016	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	12,5 %	13,6 %	7,8 %	5,1 %
Index	100	109	62	41

	2014	2015	2016	RIP
Cash flow (EUR)	134 204 393	120 273 261	100 004 695	75 785 111
Index	100	90	75	56
Investments (EUR)	45 377 547	48 718 848	51 507 723	41 664 854
Index	100	107	114	92
Return on investments	19,8 %	19,9 %	10,0 %	6,9 %
Index	100	101	50	35

Source: Verified questionnaire replies

- (120) As set out in section 5.4.4 above, the sales price has seen a significant decline in the period considered, related notably to the lower gas prices, but the average unit cost of production has not decrease as sharply.
- (121) Therefore, the profitability of the sampled Union producers decreased overall from 12,5 % in 2014 to 5,1 % during the RIP. This is below the target profit of 8 %. However, profitability is to a large extent influenced by the performance of the UK sampled producer ⁽¹⁾ and a large increase in SG&A and overheads for two other sampled producers during the period considered.
- (122) By contrast, in the 2002 review, for the original investigation period (1 July 1999 to 30 June 2000) profitability was – 18,0 %.
- (123) The change in profitability in the period considered appears not to be linked to Russian exports, as these exports have decreased since 2014, but to an overall business cycle, as well as to some specific elements for two companies/groups.
- (124) As in the previous investigations, the Union industry contested the target profit of 8 % and claimed that this industry needs significant investment and a ROCE of minimum 12 %. ⁽²⁾ Fertilizers Europe submitted an expert study it had ordered ⁽³⁾ claiming that to achieve an average ROCE of 12 %, an average pre-tax profit per tonne of EUR 94, the equivalent of a pre-tax return on sales (ROS) margin of 36 %, is needed. ⁽⁴⁾
- (125) Cash flow and return on investment decreased significantly between 2014 and the RIP. The net cash flow is the ability of the Union industry to self-finance their activities. Its development followed that of profitability in a negative trend. The return on investments is the profit in percentage of the net book value of investments. Its development largely mirrored the development of profitability in a negative trend. Meanwhile, the investments fluctuated during the period considered, with an increase between 2014 and 2016 but a decrease in the RIP.
- (126) The investigation did not reveal any difficulties encountered by the sampled Union producers in raising capital.

5.4.8. Conclusion on the situation of the Union industry

- (127) The 2008 review and the last expiry review both concluded that the economic situation of the Union industry was non-injurious.
- (128) In this investigation many injury indicators show a mixed picture and a downward trend. Sales prices are negatively influencing the profitability picture. While trends of the financial indicators such as profitability, cash flow and return of investments are negative, their absolute levels do not show injury. The market share of the Union industry remained above 90 % in the period considered.

⁽¹⁾ This was partly linked to a plant breakdown in the RIP, during which the profitability plummeted versus 2015 and 2016.

⁽²⁾ The Return On Capital Employed (ROCE) is a financial ratio to measure a company's profitability and the efficiency with which its capital is employed.

⁽³⁾ Fertilizers Europe submission dated 8 February 2018, submitted in this investigation on 5 April 2018. The name of the expert is confidential to avoid any adverse impact on it.

⁽⁴⁾ Fertilizers Europe hearing slides of 8 February 2018.

- (129) The injury indicators show that the financial performance and economic state of the industry follow a negative trend. However, the situation is much healthier than in the 2002 review, where profitability was – 18 % in the investigation period and the market share of the Union industry was 68 % (before Union enlargement).
- (130) The Commission therefore concluded that the Union industry does not suffer material injury within the meaning of Article 3(5) of the basic Regulation, although it is not as healthy as in the last expiry review and there appears to be a downwards trend, related notably to the decrease in prices.

6. LIKELIHOOD OF RECURRENCE OF INJURY

- (131) The Commission assessed what would be likely to happen to the Union industry's situation if measures were terminated.
- (132) For this purpose, as set out in section 1.4.3.2, the Commission gathered data from the cooperating Russian exporting producers, such as on sales prices, production and spare capacity.

6.1. Available spare capacity in Russia

- (133) In the last expiry review, a spare capacity of around 1 million tonnes was found (for a total production capacity of 9,6 million tonnes).
- (134) Based on Fertecon data, production of AN in Russia has increased by 7 % since 2013 and is set to increase further by 2030. Russian domestic consumption has increased significantly as indicated in section 2.4. Capacity utilisation exceeds 95 % and is expected to stay at this level in the next years.
- (135) Fertilizers Europe claimed that Russian spare capacity was 1,3 million tonnes, or 18 % of the Union market. ⁽¹⁾ Following disclosure, it reiterated its claim and also referred to the Commission's findings in the last expiry review.
- (136) The Russian association RFPA claimed that Russian spare capacity amounted to around 174 000 metric tonnes (Fertecon estimate), around 2 % of the Union consumption. ⁽²⁾ It submitted that Fertilizers Europe's estimate was incorrect as it took into account only solid AN, and that Fertecon data should be used.
- (137) As the Commission found in the last expiry review, Russian exporting producers tend to report installed capacity based on the nameplate theoretical capacity. In this investigation as well, the Commission disregarded the nameplate capacity quoted by Russian cooperating companies as they in fact produced more than their theoretical capacity. The estimated capacity utilization for the two cooperating exporting producers was above 94 %.
- (138) To establish capacity and spare capacity in Russia, the Commission used verified data from the cooperating companies and data for all other Russian exporters, adjusted when necessary ⁽³⁾. It found that capacity in Russia was around 11 million tonnes, with spare capacity of 0,6 million tonnes. This figure amounts to 7,7 % of Union consumption of around 7,9 million tonnes. Spare capacity is hence more limited than in the last expiry review. But if fully directed to the Union market, significant volumes could still be exported and have a particularly strong effect on some neighbouring regions.
- (139) Fertilizers Europe also argued that Russian capacity will be extended in view of the recent Russian plan on fertilizers of March 2018. ⁽⁴⁾ The Russian association RFPA contested Fertilizers Europe's interpretation of the report in its follow-up submission. ⁽⁵⁾ While the report does not directly point to an increase for AN, it indicates the importance of fertilizers for the Russian economy and the willingness of the government to ensure a high capacity in the country.

⁽¹⁾ Fertilizers Europe hearing slides of 22 March 2018.

⁽²⁾ RFPA submission of 13 March 2018.

⁽³⁾ Based on sampling form replies and the website of one company. The adjustment was made to account for the issue of the use of nameplate capacity by Russian companies.

⁽⁴⁾ Fertilizers Europe hearing slides of 12 April 2018 and annex 'Roadmap for the development of production of mineral fertilizers for the period until 2025'.

⁽⁵⁾ RFPA submission of 24 April 2018.

- (140) Following the disclosure, the Russian association RPPA claimed that this spare capacity would not be directed to the Union in view of the future development of Russian domestic consumption (see section 3.3). The Commission rejected this claim. While Russian consumption is expected to slightly increase it cannot be concluded that the existing spare capacity would be fully used to satisfy the domestic demand. In any event, RPPA's claim does not take into consideration any future additional Russian AN capacity.
- (141) Furthermore, the Applicant submitted that, even if the industry lost 7,7 % of the market, the Union industry market share would remain higher than in the 2002 review. The Commission noted that comparing the market shares of the Union industry in 1999-2000 and 2016-2017 must take into account the broader context. In 2002, the Union industry consisted mainly of Western European companies which faced imports not only from Russia, but also from Eastern European States which have since then become members of the Union. Accordingly, the enlargement of the Union increased the market share of the Union industry significantly. Therefore, the situation in 2002 is not directly comparable with the situation in this review.

6.2. Behaviour of Russian exporters on third country markets

- (142) The domestic Russian market is the main market of Russian producers. Brazil is by far the largest market for exports of the cooperating Russian companies. The Union industry submitted that Russian exporters would redirect volumes to the Union. ⁽¹⁾
- (143) Sales prices from the cooperating companies show a mixed picture: prices in some third countries are less attractive than Union prices, although for some countries the opposite is true. The Commission therefore concluded that some Russian volumes may be redirected from less attractive third markets to the Union market if measures lapse.
- (144) The risk of redirection is also reinforced by the expected future development of nitrogen fertilizers capacities in the US, as set out in section 3.3.
- (145) Following the disclosure, the Applicant and the Russian association RPPA claimed that redirection was unlikely as in particular one Union producer purchased considerable volumes of AN from Russia for sales globally, and would be unlikely to shift sales to the Union. The Commission noted that this phenomenon concerns some producers only, and that if the measures were terminated the behaviour of Russian exporting producers selling AN would likely change.
- (146) Moreover, the Russian association RPPA claimed that the investments in Brazil by various Russian exporting producers showed the attractiveness of Brazil by contrast to the Union. The Commission noted that these investments confirm the willingness of Russian producers to export to third countries. These investments were made while measures have been in place in the Union. They do not give an indication as to whether the Union market would be attractive or not should the measures be terminated (see section 6.4).

6.3. The likely future evolution of Russian export prices

- (147) As set out in section 5.3.2, the Commission could not make a decisive finding on undercutting.
- (148) As set out in section 5.3.1, the sales of PJSC KuibyshevAzot were not representative due to the volume and specific customer relationship at stake.
- (149) For its prospective analysis on the likelihood of recurrence of injury, the Commission accordingly took into consideration the overall Union sales of Uralchem, including the sales of dirty AN by the Kirovo branch of Uralchem. It recalled that dirty AN is part of the product concerned in this investigation and constitutes the vast majority of the exports to the Union from Russia.
- (150) For all sales of AN by Uralchem, first, adjustments downwards were made for transport and unloading (in the range of [EUR 5 to 15 per tonne]). Second, as set out in section 5.3.1, Uralchem sells through a related trader. The Commission established the export price on the basis of Article 2(9) of the basic Regulation. Adjustments downwards were made for all costs incurred between importation and resale including SG&A (in the range of [1 % to 3 %]) and a reasonable profit margin. For the profit margin, given the lack of cooperation from unrelated

⁽¹⁾ Fertilizers Europe hearing slides of 22 March 2018.

importers in the present investigation as well as lack of verified data from previous investigations covering the same product definition, the Commission used the profit margin of an unrelated importer from a recent investigation on another, similar chemical, melamine, in the range of [2 % to 4 %] ⁽¹⁾.

- (151) Following the disclosure, the Russian association RFPA argued on behalf of Uralchem that the Commission had incorrectly made adjustments related to transport and unloading costs. The Commission found this claim to be warranted in respect of some company specific delivery terms to a few Member States.
- (152) In addition, RFPA claimed that no Article 2(9) adjustment was warranted as the Uralchem Trading SIA in Latvia did not import AN in the Union. The Commission recalled that this company was related to one exporting producer. Therefore, it was entitled to construct the export price under Article 2(9) of the basic Regulation.
- (153) For the sales by the Kirovo branch of Uralchem of dirty AN, the Commission compared the price at which Uralchem sold the dirty and the normal AN in a large third country market where the Commission found that the volumes sold of both dirty and normal AN were representative. A conclusive trend could be found that Uralchem sold the dirty AN at a higher price than the normal AN. Therefore an adjustment downwards (in the range of [8 % to 10 %]) was made to establish a price at which normal AN would likely enter the Union market.
- (154) Following the disclosure, the Russian association RFPA claimed that the data used for the adjustment was incorrect. The Commission noted that using alternative data following RFPA's claim would be less relevant due to the lesser quantity for comparison purposes, but would in any event result in a similar adjustment, with a difference of less than one percentage point, thereby confirming the relevance of the trend found as a reasonable basis for the adjustment.
- (155) Moreover, the Commission considered it appropriate to take account of the fact that a future export price would concern all potential Russian exports to the Union, catering for the variety of sales channels and delivery terms likely to be used by all Russian exporting producers. Therefore, the Commission took that element into account in the determination of the future export price.
- (156) On that basis the Commission established a prospective and likely price of AN from Russia to the first independent customer in the Union, established on a cost, insurance, freight ('CIF') basis, with appropriate adjustments upwards for conventional duty (6,5 %) and importation costs (in the range of [1 % to 3 %]). The Commission found that the product concerned would be likely be sold on the Union market at a price below the weighted average sales price of the Union producers charged to unrelated customers on the Union market.
- (157) The Union industry submitted that Russian prices to Brazil should be adjusted to replace the Russian export price to the Union. ⁽²⁾ Following the disclosure, the Union industry reiterated this claim. In view of the significant volumes of Russian AN reaching the Union market for the Russian cooperating companies, taking into account the dirty AN sold by the Kirovo branch of Uralchem and the relevant adjustment, such a methodology was not appropriate.
- (158) By contrast, the Applicant and the Russian association RFPA argued that the Commission should use statistical data instead of actual verified sales of Uralchem, to establish the injury margin. RFPA argued that the Commission has used statistical data in various investigations on AN or other products.
- (159) The Commission rejected this claim as it considered that the verified data used was more reliable than unverified statistical data. In this respect the Commission recalled that the verified information accounted for significant volumes of Russian AN reaching the Union market taking into account also the dirty AN sold by the Kirovo branch of Uralchem. By contrast, in the 2002 review the sole cooperating exporting producer had no exports of the product concerned to the Community. Moreover, in the last expiry review price undertakings were in place.

⁽¹⁾ Commission Implementing Regulation (EU) 2017/1171 of 30 June 2017 imposing a definitive anti-dumping duty on imports of melamine originating on the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 170, 1.7.2017, p. 62), recital (156). It is noted that both melamine, obtained from urea, and AN are derivatives of natural gas, and that there is some overlap in the producing companies.

⁽²⁾ Fertilizers Europe hearing slides of 22 March 2018.

6.4. Attractiveness of the Union market

- (160) Globally, urea is the leading fertilizer, with above 50 million nitrogen tonnes, versus around 10 million for AN ⁽¹⁾. However in the Union, AN is the leading fertilizer. The Union is the largest AN market in the world, although now closely followed by Russia. As noted above, the level of total imports to the Union has decreased, but some countries have exported more over the period, such as the neighbouring Georgia and Turkey. Russian producers could treat the Union as neighbouring market and prefer exports to Europe over exports to Latin America. Furthermore, the Union market remains attractive in terms of prices.
- (161) In view of its size, geographic proximity and prices, the Union market is hence considered attractive for Russian producers.
- (162) The Commission conducted a simulation to consider what would happen to the Union industry's profitability in a scenario where the Union industry would have to match the Russian average price established in section 6.3 to maintain its volumes. Based on this simulation, the profitability of the Union industry would turn negative.
- (163) Following the disclosure, the UK farmers association submitted that due to the strong economic performance of the Union industry, the recurrence of injury was unlikely to recur. In view notably of the results of the simulation, the Commission dismissed this claim.
- (164) Moreover, the Applicant stressed the Russian association RFPA's claim that Russian volumes would not enter the Union market because of, among others, the lack of infrastructure from Russian companies in the Union. However, the same submission from the Applicant assumed that, if the measures were terminated, Russian companies would have an incentive to invest in facilities.
- (165) In addition, the Russian association RFPA and the Applicant stated that the decreasing volumes from dirty AN to the Union in the period concerned proved the lack of attractiveness of the Union market. RFPA also argued that the CAN imports from Russia to the Union had dropped. The Commission recalled that it did not investigate the CAN market. While decreasing volumes of dirty AN were observed recently, no long term trend has been observed that could demonstrate that the European market is no longer attractive to Russian producers of AN as a whole should the measures be terminated.

6.5. Conclusion on likelihood of recurrence of injury

- (166) There is a likelihood that Russian producers could use their still available albeit limited spare capacity to export to the Union should the measures be terminated. It is also likely that some volumes that are currently exported to third countries would be re-directed given the relative attractiveness of the Union market and its proximity to Russia. As the Union industry is in a less prosperous state compared to the last expiry review (section 5), such increased volumes could likely cause injury to recur. The likely future evolution of Russian export prices is also a clear indication that injury could recur quickly.
- (167) On this basis, it is concluded there is a likelihood of recurrence of injury should the measures be removed.

7. LEVEL OF THE ANTI-DUMPING MEASURES

7.1. Setting of the level of duty

- (168) In line with Article 11(9) of the basic Regulation, the Commission followed to the extent possible the methodology used when setting the measures. It established the amount of duty necessary to avoid recurrence of injury to the Union industry.
- (169) For the injury margin calculation, in the 2002 review, the non-injurious price has been obtained by adding to the full unit cost of production a profit margin that may reasonably be reached in the absence of injurious dumping. The profit margin used for this calculation was 8 %. The Commission followed the logic set out in section 6.3, and used the same profit margin in line with the previous investigations concerning AN.

⁽¹⁾ See Yara Industry Handbook 2017 https://www.yara.com/siteassets/investors/057-reports-and-presentations/other/2017/fertilizer-industry-handbook_2017_slides_only.pdf.

- (170) The Union industry ordered and submitted a study by an expert to substantiate why, in its view, a significantly higher target profit of 36 % ROS (12 % ROCE) was justified. ⁽¹⁾ This claim had been made and rejected by the Commission in previous investigation. The claim could, as in previous cases, not be accepted because the target profit for the analysis must be limited to the profit which the Union industry could expect to achieve in normal conditions of competition, in the absence of dumped imports.
- (171) Following the disclosure, two Union producers reiterated the same claim, requesting a target profit of 36 % ROS. In the alternative they submitted that the Union industry had in past years achieved two-digit profitability which would justify a higher target profit than 8 %. The Commission noted that the profitability of the Union industry has fluctuated during the period considered as well as in previous years when measures have been in place both above and below the target profit. The Commission therefore considered that the target profit of 8 % in the absence of dumping, as established in previous investigations was still valid.
- (172) Moreover, two Union producers claimed that the cost of production of Union producers should be changed to take into account developments following the RIP relating to gas price and CO₂ emissions. The Commission rejected this claim and recalled that under Article 6 of the basic Regulation, information relating to a period subsequent to the investigation should normally not be taken into consideration.
- (173) The level found is EUR 32,71 for normal AN. This is below the level of EUR 47,07 set in the 2002 review. The Commission then established the level of measures for various product types (see section 9) in line with the methodology used in previous investigations.

7.2. Users' request for termination of the measures

7.2.1. Arguments raised by users in the course of the investigation

- (174) During the investigation, the Applicant claimed that the injury situation has changed due to changes of lasting nature which in turn alters the result of the balancing exercise within the Union interest test. ⁽²⁾ In addition, COPA-COGECA, representing Union farmers and cooperatives, sent submissions and called for the anti-dumping measures to be terminated. COPA-COGECA claimed that the anti-dumping measures damage the competitiveness of Union agricultural exports and family farm incomes.
- (175) As set out in section 1.4.4, the Commission sent a questionnaire to farmers' associations and nearly all interested parties (farmers' associations, Union industry and Russian association) have submitted comments on this point.
- (176) Following the disclosure, several European farmers associations reiterated that the measures are hurting European farmers and lowering their global competitiveness. The Applicant submitted that the Commission should have conducted a broader assessment of the Union interest. It is recalled that the Notice of Initiation stated that *'the partial interim review is limited in scope to the examination of injury'*. Nonetheless, the Commission addressed in section 7.2.2 below the substance of all arguments made by both the Applicant and Fertilizers Europe during the course of the investigation. The Applicant also claimed that comments submitted by Fertilizers Europe should be disregarded due to the timing of their submission. In view of the fact that Fertilizers Europe raised its arguments in good time during the ongoing investigation this claim is rejected.

7.2.2. Assessment

- (177) First, the farmers' associations claimed that the measures have for many years made a key raw material more expensive. The part of fertilizers in the cost of production of farmers can go up to 40 %. The Commission acknowledged that AN is an important fertilizer and a key raw material for various European farming businesses. The amount of used AN as a fertilizer depends on the grown cereal (wheat, barley, oats, rye, triticale),

⁽¹⁾ Fertilizers Europe submission dated 8 February 2018, submitted in this investigation on 5 April 2018. The name of the expert is confidential to avoid any adverse impact on it.

⁽²⁾ See for instance the Applicant's submission of 9 November 2017 and the Applicant's hearing slides of 3 January 2018. See also various emails in September 2017 from farmers' associations requesting interested party status.

oilseed rape, potatoes, sugar beet, or grassland. Moreover, the costs of AN for farmers also varies from country to country. For the UK for example, AN consisted between 8 % and 45 % of the fertilizers used for the crops mentioned. The Commission thus found that the use of AN as a fertilizer covers very diverse realities and cost of fertilizer on average appears to be below 10 %. As the measures are not limited geographically to areas where the cost of fertilizers is particularly high, the overall cost for farmers in the entire Union is hence not disproportionately high.

- (178) In addition, the Applicant submitted that AN was not priced at parity with urea in the Union and alleged that this was due to the measures. The Union industry did not reject the claim that AN had a premium over urea, but submitted that this was due to specificities of the product. The Commission recalled that the current investigation was limited to the AN market and not to the markets for other fertilizers.
- (179) Second, the Applicant claimed that the Union farmers were suffering from competition as Russian farmers who benefit from low fertilizer costs are entering the Union market with cereals. Union cereal producers notably have indicated that they suffer from global competition and limited access to competitively priced inputs, including AN. It noted that Union farmers not only face increased competition in the Union, but they have also been displaced from export markets, for instance in Egypt. Following the disclosure, the Applicant claimed that the analysis should focus on the sectors most impacted, such as arable crops and dairy. It noted that in 2015-2016 the Union was the world's second largest exporter of grains, but is forecasted in 2018 to be only the fifth largest exporter. The Commission noted that the measures were in place in 2015-2016 at a time where competitiveness seemed high. By contrast, Fertilizers Europe highlighted that in the long term EU agricultural exports have been a major success. The Commission found that the elements submitted from both sides were not exhaustive, as the picture varies by country/crop, and no firm conclusion could be drawn that the export performance of the farmers should tilt the balancing of interests towards that of farmers.
- (180) Third, the Irish association also pointed out the shortage of supply, especially in 2017. However, the Commission found that the Union industry's capacity could cover consumption. Moreover, the Irish market encountered specific delivery problems in the distribution chain which cannot be generalised.
- (181) Furthermore, AN is prohibited in Ireland for regulatory reasons. The Irish farmers admitted that they use CAN instead, but claimed that the high AN prices also have an influence on the CAN prices. However, the measures in place do not prevent Russian companies to produce and export CAN. The Russian association indicated that, taking into account the normal 6,5 % duty, the average price of CAN coming from Russia into Ireland is higher than for the CAN coming from Belgium or from the Union overall. Therefore, the Russian association noted that the Irish CAN market is not attractive for Russian producers even without anti-dumping duties.
- (182) Finally, in the last expiry review, the Commission noted that farmers may not benefit from a potential price decrease following a potential termination of the measures. Farmers typically buy from distributors who may not pass on any of the benefits. Following the disclosure, the Applicant noted that farmers can organize in cooperatives and would benefit from increased competition from Russian exporting producers on the Union market, lowering farmer production costs. The Commission acknowledged that the existence of cooperatives can help farmers to benefit from increased competition in the supply of AN.

7.2.3. Conclusion

- (183) Following the assessment of the elements brought forward during the investigation, the termination of the measures is not justified.

8. DEFINITIVE ANTI-DUMPING MEASURES

- (184) In view of the findings of this partial interim review limited to injury, the Commission concludes that the level of the anti-dumping measures applicable to imports of AN originating in Russia should be amended.
- (185) For EuroChem, the level was set in the 2008 review based on the dumping margin. As the injury margin found in this review investigation is lower than the duty rate currently in place, the new level of measures should also apply to EuroChem.
- (186) For Kirovo, the new duties set out in Table 12 should only apply for CN codes 3102 30 90 and 3102 40 90.

(187) Therefore, the anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as shown in Table 12:

Table 12

New level of duties

Product description	CN code	TARIC code	Current level of measures for EuroChem (EUR per tonne)	Current level of measures for Kirovo (EUR per tonne)	Current level of measures for All Others (EUR per tonne)	New duty (EUR per tonne)
Ammonium nitrate other than in aqueous solutions	3102 30 90	—	32,82	47,07	47,07	32,71
Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	32,82	47,07	47,07	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	32,82		47,07	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	32,82		47,07	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	32,82		47,07	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, with no phosphorus and no potassium content	3105 10 00	10	32,82		47,07	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of less than 3 % by weight	3105 10 00	20	31,84		45,66	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 3 % by weight or more but less than 6 % by weight	3105 10 00	30	30,85		44,25	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 6 % by weight or more but less than 9 % by weight	3105 10 00	40	29,87		42,83	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 9 % by weight or more but not exceeding 12 % by weight	3105 10 00	50	28,88		41,42	28,78

Product description	CN code	TARIC code	Current level of measures for EuroChem (EUR per tonne)	Current level of measures for Kirovo (EUR per tonne)	Current level of measures for All Others (EUR per tonne)	New duty (EUR per tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of less than 3 % by weight	3105 20 10	30	31,84		45,66	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of 3 % by weight or more but less than 6 % by weight	3105 20 10	40	30,85		44,25	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of 6 % by weight or more but less than 9 % by weight	3105 20 10	50	29,87		42,83	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of 9 % by weight or more but not exceeding 12 % by weight	3105 20 10	60	28,88		41,42	28,78
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of less than 3 % by weight	3105 51 00	10	31,84		45,66	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 3 % by weight or more but less than 6 % by weight	3105 51 00	20	30,85		44,25	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 6 % by weight or more but less than 9 % by weight	3105 51 00	30	29,87		42,83	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 9 % by weight or more but not exceeding 10,40 % by weight	3105 51 00	40	29,41		42,17	29,31
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of less than 3 % by weight	3105 59 00	10	31,84		45,66	31,73

Product description	CN code	TARIC code	Current level of measures for EuroChem (EUR per tonne)	Current level of measures for Kirovo (EUR per tonne)	Current level of measures for All Others (EUR per tonne)	New duty (EUR per tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 3 % by weight or more but less than 6 % by weight	3105 59 00	20	30,85		44,25	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 6 % by weight or more but less than 9 % by weight	3105 59 00	30	29,87		42,83	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 9 % by weight or more but not exceeding 10,40 % by weight	3105 59 00	40	29,41		42,17	29,31
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K ₂ O of less than 3 % by weight	3105 90 20	30	31,84		45,66	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K ₂ O of 3 % by weight or more but less than 6 % by weight	3105 90 20	40	30,85		44,25	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K ₂ O of 6 % by weight or more but less than 9 % by weight	3105 90 20	50	29,87		42,83	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K ₂ O of 9 % by weight or more but not exceeding 12 % by weight	3105 90 20	60	28,88		41,42	28,78

(188) Following disclosure, the Applicant asked for a minimum import price to be put in place, based on a benchmark (FOB Baltic Sea price for the month of August 2018 published by a consultancy, adjusted for some transport costs, and amounting to EUR 188 per metric tonnes). As the benchmark was published by a consultancy, the Applicant argued that the minimum price could be revised on a quarterly basis. However, a minimum import price cannot be envisaged for reasons of practicability and efficiency. First, in view of the relations between some Russian exporting producers and entities in the Union, and in view of the various product types, a minimum import price would not be practical. Second, in view of the volatility of gas prices, a minimum import price might not be efficient to counter the risk of recurrence of injury. Even with a quarterly adjustment as proposed by the Applicant it remains uncertain whether a minimum price set a certain point in time would have the desired effect to offer sufficient protection to the Union industry in the three months of its application.

(189) In view of the likelihood of recurrence of injury found in section 6, the importance of gas for AN production set out in section 2 and the practices of Russia on gas pricing, the Commission also found it necessary to monitor the evolution of the imports of AN originating in Russia between the date of adoption of this Regulation and the

expiry date of the anti-dumping measures in September 2019. The monitoring will enable the Commission to follow relevant market developments in the Union and facilitate appropriate action where required.

- (190) A company may request the application of those individual anti-dumping duty rates if it changes the name or the address of its entity. The request must be addressed to the Commission ⁽¹⁾. The request must contain all the relevant information to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name or address of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name or address will be published in the Official Journal of the European Union.

9. DISCLOSURE AND CONCLUSION

- (191) As set out in section 1.4.6, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to propose to amend the duty rate applicable. Comments were analysed and taken into consideration where warranted.
- (192) It follows from the above that the anti-dumping measures should be amended as set out in section 8.
- (193) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion.

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Commission Implementing Regulation (EU) No 999/2014 is replaced as follows:

- 1) The tables in point (a) and (c) are replaced by the following:

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
Ammonium nitrate other than in aqueous solutions	3102 30 90	—	32,71
Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, with no phosphorus and no potassium content	3105 10 00	10	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of less than 3 % by weight	3105 10 00	20	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 3 % by weight or more but less than 6 % by weight	3105 10 00	30	30,75

⁽¹⁾ Directorate-General for Trade, Directorate H, CHAR 04/39, 1049 Brussels, Belgium.

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 6 % by weight or more but less than 9 % by weight	3105 10 00	40	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of 9 % by weight or more but not exceeding 12 % by weight	3105 10 00	50	28,78
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of less than 3 % by weight	3105 20 10	30	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of 3 % by weight or more but less than 6 % by weight	3105 20 10	40	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of 6 % by weight or more but less than 9 % by weight	3105 20 10	50	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and a potassium content evaluated as K ₂ O of 9 % by weight or more but not exceeding 12 % by weight	3105 20 10	60	28,78
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of less than 3 % by weight	3105 51 00	10	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 3 % by weight or more but less than 6 % by weight	3105 51 00	20	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 6 % by weight or more but less than 9 % by weight	3105 51 00	30	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 9 % by weight or more but not exceeding 10,40 % by weight	3105 51 00	40	29,31
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of less than 3 % by weight	3105 59 00	10	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 3 % by weight or more but less than 6 % by weight	3105 59 00	20	30,75

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 6 % by weight or more but less than 9 % by weight	3105 59 00	30	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ of 9 % by weight or more but not exceeding 10,40 % by weight	3105 59 00	40	29,31
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K ₂ O of less than 3 % by weight	3105 90 20	30	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K ₂ O of 3 % by weight or more but less than 6 % by weight	3105 90 20	40	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K ₂ O of 6 % by weight or more but less than 9 % by weight	3105 90 20	50	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K ₂ O of 9 % by weight or more but not exceeding 12 % by weight	3105 90 20	60	28,78

2) The table in point (b) is replaced by the following:

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
Ammonium nitrate other than in aqueous solutions	3102 30 90	—	32,71
Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	32,71

Article 2

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

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

Done at Brussels, 14 November 2018.

For the Commission
The President
Jean-Claude JUNCKER