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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 236/2008

of 10 March 2008

concerning terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 658/2002 [2], on imports of ammonium nitrate originating in Russia.

2. Request for review

(2) The Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation.

(3) The request was lodged by two related exporting producers in Russia, belonging to the 'Acron' Holding Company, namely OJSC Acron and OJSC Dorogobuzh. These two companies, due to their relationship are treated as one legal entity for the purpose of the present investigation ('the applicant'). The request is limited in scope to the examination of dumping as far as the applicant is concerned.

(4) The applicant alleged and provided sufficient *prima facie* evidence that the circumstances on the basis of which measures were established have changed and that these changes are of lasting nature. The applicant provided *prima facie* evidence showing that a comparison between its own costs of ammonium nitrate and its export prices to the Community would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of measures at the existing levels, which were based on the level of dumping previously established, would no longer be necessary to offset dumping.

3. Initiation

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission, on 19 December 2006, by a notice published in the *Official Journal of the European Union* [3], initiated a partial interim review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia pursuant to Article 11(3) of the basic Regulation.

(6) This review was limited in scope to dumping, with the objective of assessing the need for the continuation, removal or amendment of the existing measures in respect of the applicant.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

[2] OJ L 102, 18.4.2002, p. 1. Regulation as last amended by Regulation (EC) No 945/2005 (OJ L 160, 23.6.2005, p. 1).

[3] OJ C 311, 19.12.2006, p. 55.

4. **Investigation**

(7) The investigation of dumping covered the period from 1 October 2005 to 30 September 2006 ('review investigation period' or 'RIP').

(8) The Commission officially advised the applicant, as well as the representatives of the exporting country and the Community industry of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

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

(10) A questionnaire was sent to the applicant and its related sales companies on the Russian domestic market. The applicant as well as two of the related sales companies submitted full questionnaire replies.

(11) The Commission sought and verified all information deemed necessary for the determination of dumping. Verification visits were carried out at the premises of the following companies:

(a) The exporting producers:

— OJSC Acron,

— OJSC Dorogobuzh;

(b) The related sales companies:

— JSC Rostragronova,

— JSC Kubanagronova.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(12) The product under review is the same as in the investigations mentioned in recital (1), i.e. solid fertilizers with an ammonium nitrate content exceeding 80 % by weight originating in Russia (the product concerned), currently classifiable within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91.

2. **Like product**

(13) As established in the previous investigations and confirmed in this investigation, the product concerned and the products manufactured and sold by the applicant on the Russian domestic market were found to have the same basic physical and chemical characteristics and essentially the same uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to the determination of dumping as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

C. **RESULTS OF THE INVESTIGATION**

(14) In accordance with Article 11(3) of the basic Regulation, it was examined whether the circumstances on the basis of which the current dumping margin was based have changed and whether such change was of a lasting nature.

1. **Normal value**

(15) In order to establish the normal value, it was first verified that the total domestic sales of the applicant were representative in accordance with Article 2(2) of the basic Regulation. Domestic sales of the applicant were found to be representative when compared to its export sales as they represented more than 5 % of its total export sales volume to the Community.

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

(17) Gas is a main raw material component in the manufacturing process of the product concerned and represents a significant proportion of the total cost of production. In accordance with Article 2(5) of the basic Regulation, it was examined whether the costs associated with the production and sales of the product under consideration were reasonably reflected in the records of the parties concerned.

(18) It was established on the basis of data published by internationally recognised sources specialised in energy markets, that the prices paid by the applicant were abnormally low. By way of illustration, they amounted to one fifth of the export price of natural gas from Russia and were also significantly lower than the gas price paid by the Community producers. In this regard, all available data indicate that domestic gas prices in Russia were regulated prices which are far below market prices paid in unregulated markets for natural gas.

(19) Since gas costs were not reasonably reflected in the applicant's records, they had to be adjusted accordingly. In the absence of any undistorted gas prices relating to the Russian domestic market, and in accordance with Article 2(5) of the basic Regulation, gas prices had to be established on 'any other reasonable basis, including information from other representative markets'. The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs and adjusted to reflect local distribution costs. Waidhaus being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be considered a representative market.

(20) Following disclosure, the applicant claimed that any adjustment of its gas price paid on the domestic market would be unwarranted because the accounting records of the company fully reflected the costs associated with the activity of production and sales of the like product in the country of origin.

(21) However, when examining cost of production of the like product under Article 2(5) of the basic Regulation, it must be determined whether the costs as booked in the company's accounts are *reasonably* reflecting the costs associated with the production and sale of the product under investigation. For the reasons set out above in recital (18), this was found not to be the case. The applicant did not address the apparent significant difference between the price for gas paid on the Russian domestic market and the export price of natural gas from Russia, on the one hand, and the one paid by the Community producers, on the other hand. It did also not address the fact that domestic prices for natural gas were regulated in Russia and could not be considered to reasonably reflect a price normally payable in undistorted markets. Finally, the applicant did not explain why despite the reasons set out in recital (18), the cost of gas used for the production of the like product sold on the domestic market would be reasonably reflected in its records. This claim therefore had to be rejected.

(22) The applicant further claimed that by making a gas adjustment, *de facto* a methodology to determine normal value was used which is not foreseen by the basic Regulation. Thus, by replacing domestic gas costs by costs calculated as described above in recital (19), and due to the fact that these costs constitute major part of the total costs of the like product and therefore also of the constructed normal value, the normal value would be *de facto* determined by data from a third 'representative' market. In this regard, the applicant argued that for market economy countries, the basic Regulation foresees, however, only the following methodologies to determine the normal value:

(i) on the basis of the domestic price of the like product in the ordinary cause of trade, or alternatively, in case sales are not made in the ordinary course of trade;

(ii) on the basis of the cost of production in the country of origin (plus a reasonable amount for selling, general and administrative costs ('SG&A') and for profits) or

(iii) representative export prices of the like product to an appropriate third country. The applicant concluded that on this basis normal value should not be based on data from a third representative market.

(23) In this regard and as also outlined below in recitals (45) to (48), it should first be noted that normal value was established in accordance with the methodologies outlined in Article 2(1) to (6) of the basic Regulation. However, in order to establish whether domestic sales were made in the ordinary course of trade by reason of price, i.e. whether they were profitable, it must first be established whether the costs of the applicant were a reliable basis within the meaning of Article 2(5) of the basic Regulation. Only after costs have been reliably established, it can be determined which methodology to establish normal value should be used. It is therefore wrong to claim that by determining reliable costs in accordance with Article 2(5) of the basic Regulation a new methodology to determine normal value was introduced.

(24) The applicant moreover argued that when adjusting cost in accordance with Article 2(5) of the basic Regulation, the level of the adjusted costs cannot exceed the level of the respective costs in the exporting country. Otherwise, the methodology used when adjusting cost would be in breach of Article 2(3) of the basic Regulation which stipulates that normal value of the like product shall be calculated on the basis of the costs of production in the country of origin.

(25) The cost adjustment was done in accordance with Article 2(5) of the basic Regulation. Article 2(5) of the basic Regulation does not refer to the 'cost of production in the country of origin', but explicitly entitles the Institutions to use the cost of production coming 'from other representative market' in other countries than the country of origin. The applicant's argument therefore had to be rejected

(26) Finally, the findings set out above in recitals (18) and (19) are also not in contrast to Article 1 of the basic Regulation, as claimed by the applicant. Indeed, although Article 1 of the basic Regulation indicates that normal value should be established by reference to data from the country of export, the basic Regulation makes also clear that this rule is subject to exceptions.

(27) The applicant's arguments in this respect had therefore to be rejected.

(28) The applicant further claimed that if an adjustment were to be made to its cost of natural gas on the domestic market, such adjustment should be based on either the

(i) non-regulated gas prices available in Russia, or

(ii) the average export price of Russian natural gas to the Baltic countries, or alternatively

(iii) on the basis of the actual cost of production of natural gas in Russia plus a reasonable profit margin.

(29) Firstly, the fact that the Commission could have chosen a different basis does not render the choice of Waidhaus unreasonable. The primary criterion for the choice of the basis on which to establish the gas prices is that it reasonably reflects a price normally payable in undistorted markets. It is undisputed that this condition is met with respect to the prices at Waidhaus. Secondly, the fact that the volume of gas sold at non-regulated prices in the domestic market was only minor during the RIP and that such prices were significantly closer to the regulated domestic price than to the freely-determined export price strongly suggests that these non-regulated prices were distorted by the prevailing regulated prices. Therefore, the unregulated domestic prices could not be used. It was also considered that Russian export prices of gas to the Baltic States were not sufficiently representative, due to the relatively low export volumes to these countries. Furthermore, necessary data concerning transportation and distribution cost were not available and therefore, reliable prices to the Baltic States could not be established. Indeed, by far the greatest volume of gas is exported via the Waidhaus hub which represents therefore an appropriate basis for an adjustment. The applicant did not provide any evidence regarding the existence of representative markets, other than the Waidhaus hub, where prices reasonably reflect a price normally payable in undistorted markets. Consequently, these arguments were rejected.

(30) In this context, the applicant also claimed that it purchased approximately 50 % of the natural gas consumed in its production of fertilisers on the non-regulated market in Russia. The applicant claimed it would therefore be discriminatory to adjust its gas costs while no such adjustments would be made for other exporters with higher cost levels similar to those of the applicant. It should be noted that according to the verified questionnaire reply, the applicant's purchases of natural gas on the un-regulated market in Russia were marginal during the RIP. This claim had therefore to be rejected.

(31) As far as the third alternative mentioned under (iii) in recital (28) above is concerned, i.e. to base the adjustment on the actual cost of production of natural gas in Russia, it should first be noted that such alternative is not, as claimed by the applicant, expressively foreseen in Article 2(5) of the basic Regulation. Furthermore, as mentioned in recital (29), the primary criterion for the choice of the basis on which to establish the gas prices is that it reasonably reflects a price normally payable in undistorted markets. Thus, whether the price of gas charged by the supplier to the customers is made at a profit as such is irrelevant in this context. This argument had therefore to be rejected.

(32) The applicant furthermore argued that domestic prices for natural gas in Russia regulated by the State are increasing constantly and reaching levels covering the cost of production of gas. Therefore, the price on the domestic market cannot be considered as uncompetitive or unreasonably low.

(33) This argument has no grounds since the correct standard for choosing a representative market is not whether prices are profitable as such but whether prices reasonably reflect a price normally payable in undistorted markets, as explained in recital (29) above. This is not the case for prices regulated by the State. Furthermore, this argument also contradicts public statements of the Russian gas supplier (as confirmed by its published audited accounts) that the Russian domestic gas prices do not cover production, transportation and sales cost. Therefore, this argument was rejected.

(34) As regards the calculation method of the gas price at Waidhaus as such, the applicant claimed that the Russian export duty payable for all exports should have been deducted from the Waidhaus price, because the export duty is not incurred domestically.

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

(36) The applicant further claimed that the price at Waidhaus should have been adjusted for quality, availability, marketability, transportation and other conditions of sale which would be different in the export and the domestic market of natural gas. It should first be noted that the price of Waidhaus was indeed adjusted by different transportation cost for the export and the domestic market and that the applicant's claim in this regard was not warranted and had to be rejected. As far as the other elements are concerned the applicant did not provide any further information or any supporting evidence. In particular, the applicant did not show, nor was there any other information available, that there were differences in quality, availability, marketability and other conditions of sales which would have justified further adjustments, nor did the applicant attempt to quantify these alleged differences.

(37) In this context, the applicant further argued that no adjustments for natural comparative advantages have been made to the price at Waidhaus. In this regard, it was claimed that since gas is largely available in Russia but not in the Community, prices in Russia would be naturally lower than the price of the exported gas. Furthermore, it was alleged that the export capacity would be limited by the limits of the existing gas transportation system which would increase export prices of Russia. The applicant also argued that the 'abnormal high profits' of the Russian gas supplier on the export market should be deducted from the Waidhaus price used.

(38) As mentioned in recital (29) above, the primary criterion for the choice of Waidhaus prices as basis on which to establish the gas prices is that they reasonably reflect a price normally payable in undistorted markets. The market conditions prevailing in the domestic market are irrelevant in this context. Therefore these arguments had to be rejected.

(39) The applicant also objected that the mark-up of the local distributors has been added to the adjusted gas price, claiming that profits of distributors would already be included in the price at Waidhaus. In this regard, the applicant claimed that the local distributors in Russia were fully owned subsidiaries of the gas supplier and therefore addition of the profit of these distributors could constitute double counting.

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

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

(42) Moreover, the applicant, who has the burden of proof, was not able to submit any further information or evidence which showed whether and in what extent distribution costs were indeed included in the Waidhaus price. However, since domestic customers were purchasing the gas from local suppliers, it had to be assumed that they would have to pay local distribution costs which are not as such included in the unadjusted Waidhaus price. Therefore, at this stage of the proceeding it had to be considered that this adjustment was warranted and consequently the argument was rejected.

(43) However, the Community Institutions also considered that the impact on the calculation of the dumping margin of this specific adjustment may be significant. Therefore, given the particular situation described above in recital (41), it was considered that if the applicant supplies sufficient verifiable evidence, the Commission may consider the re-opening of the investigation in this regard.

(44) The applicant also made allegations about non-competitive domestic pricing on gas in Germany. It is noted that ongoing investigations by German antitrust authorities concern prices at which German main gas distributors sell the gas on the domestic market, and therefore it is not linked at al to the price at which Russian exported gas is sold at Waidhaus.

(45) After adjusting the cost of manufacturing as described above, no domestic sales were made in the ordinary course of trade pursuant of Article 2(4) of the basic Regulation.

(46) It was therefore considered that domestic prices did not provide an appropriate basis for the establishment of the normal value and another method had to be applied. In accordance with Article 2(3) and (6) of the basic Regulation, normal value was constructed by adding to the exporter's manufacturing costs of the product concerned, adjusted where necessary as mentioned in recital (19) above, a reasonable amount for SG&A and a reasonable amount for profit.

(47) SG&A costs and profit could not be established on the basis of the chapeau of Article 2(6) of the basic Regulation because the applicant did not have representative domestic sales of the product concerned in the ordinary course of trade. Article 2(6)(a) of the basic Regulation could not be applied, since there is only one producer subject to the investigation. Article 2(6)(b) was not applicable either, since the manufacturing cost of the applicant for products belonging to the same general category of goods would also need to be adjusted in respect of gas costs, for the reasons indicated in recital (18) above. Therefore, SG&A costs and profit were established pursuant to Article 2(6)(c) of the basic Regulation.

(48) In accordance with Article 2(6)(c) of the basic Regulation, the SG&A costs were based on a reasonable method. The North American market showed a significant volume of domestic sales and a considerable level of competition from both domestic and foreign companies. In this respect, consideration was given to publicly available information relating to major companies operating in the fertilizers business sector. It was found that the corresponding data from North American (USA and Canadian) producers would be the most appropriate for the purpose of the investigation, given the large availability of reliable and complete public financial information from listed companies in this region of the world. Therefore, SG&A costs and profit were established on the basis of the weighted average SG&A costs and profit from three North American producers, which were found to be amongst the largest companies in the nitrogen fertilizers' sector, with regard to their domestic sales of the same general category of products (nitrogen fertilizers). These three producers were considered to be representative of the nitrogen fertilizers' business and their SG&A costs and profit thereby representative of those normally incurred by companies operating successfully in that business segment. It should be noted that there were no indications that the amount for profit so established would exceed the profit realized by other Russian producers on sales of products of the same general category on their domestic market.

(49) The Community industry objected to the above approach with regard to the determination of the SG&A and claimed the applicant's own SG&A should have been used. However, Article 2(6) of the basic Regulation sets out that the amounts for SG&A shall only be based on actual data pertaining to the production and sales of the exporting producer concerned, when these sales were made in the ordinary course of trade. As outlined in recitals (45) and (46), this was not the case and this argument therefore had to be rejected.

2. **Export price**

(50) In accordance with Article 2(8) of the basic Regulation, the export price was established on the basis of the price actually paid or payable for the product concerned when sold for export to the Community.

3. **Comparison**

(51) The normal value and the export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between normal values and export prices, due allowance in the form of adjustments was made for differences affecting price and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport, credit, packing and bank charges were granted when reasonable, accurate and supported by verified evidence.

4. **Dumping margin**

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

(53) The investigation showed that dumping took place during the RIP. The dumping margin expressed as a percentage of the CIF Community frontier price, duty unpaid, is 42,06 %.

5. **Lasting nature of the circumstances prevailing during the IP**

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

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

(56) No evidence was found that export sales would not continue to be made at the current price level.

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

D. **TERMINATION OF THE REVIEW**

(58) Since, in the original investigation the duty was imposed in the form of a specific amount per tonne, it should have the same form in the current investigation. The duty calculated on the basis of the current margin of dumping would be EUR 48,09/t.

(59) It is recalled that, as outlined in recital (94) of Council Regulation (EC) No 658/2002, when imposing definitive measures in 2002, the injury margin was used when determining the amount of the definitive duty to be imposed in accordance with the lesser duty rule. As defined by Article 1(2) of Regulation (EC) No 658/2002, the duty currently in force is depending on the specific product type and varies between EUR 41,42/t and EUR 47,07/t.

(60) Since the duty established on the basis of the current margin of dumping is higher than the current duty, the review should be terminated without amending the level of the duty applicable to the applicant, which should be maintained at the level of the definitive anti-dumping duty rate established in the original investigation.

E. **UNDERTAKING**

(61) The applicant expressed an interest in offering an undertaking but failed to submit a sufficiently substantiated undertaking offers within the deadlines set in Article 8(2) of the basic Regulation. Consequently no undertaking offer could be accepted by the Commission. However, it is considered that the complexity of several issues, namely

1. the volatility of the price of the product concerned which would require some form of indexation of minimum prices, while at the same time the volatility is not sufficiently explained by the key cost driver; and

2. the particular market situation for the product concerned (*inter alia*, that there are limited imports from the exporter subject to this review)

point to the need to further consider whether an undertaking combining an indexed minimum price and a quantitative ceiling would be workable.

(62) As mentioned above, due to this complexity the applicant could not formulate an acceptable undertaking offer within the statutory deadline. In view of the above, the Council considers that the applicant should exceptionally be allowed to complete its undertaking offer beyond the above-mentioned deadline but within 10 calendar days from entry into force of this regulation.

F. **DISCLOSURE**

(63) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present review and to maintain the existing anti-dumping duty on imports of the product concerned produced by the applicant. All parties were given an opportunity to comment. Their comments were taken into account where warranted and substantiated by evidence,

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review of the anti-dumping measures applicable to imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91 and originating in Russia, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated without amending the anti-dumping measures in force.

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

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

Done at Brussels, 10 March 2008.

For the Council
The President
D. RUPEL

COUNCIL REGULATION (EC) No 237/2008

of 10 March 2008

terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of ammonium nitrate originating, *inter alia*, in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) On 22 January 2001 the Council imposed, by Regulation (EC) No 132/2001 [2], a definitive anti-dumping duty (the existing measures) of EUR 33,25 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating, *inter alia*, in Ukraine. The investigation that led to the existing measures will be referred to as the original investigation.

(2) On 17 May 2004, following a partial interim review, by Regulation (EC) No 993/2004 [3] the Council exempted from the anti-dumping duties imposed by Regulation (EC) No 132/2001 imports to the Community of the product concerned produced by companies from which undertakings would be accepted by the Commission. By Commission Regulation (EC) No 1001/2004 [4], undertakings were accepted for a period of 6 months and by Commission Regulation (EC) No 1996/2004 [5] for a further period until 20 May 2005. The purpose of these undertakings was to take account of certain consequences of the enlargement of the European Union to 25 Member States on 1 May 2004.

(3) By Regulation (EC) No 945/2005, following an interim review limited in scope to the definition of the product concerned, the Council decided that the definition of the product concerned should be clarified and that the measures in force should apply to the product concerned when incorporated in other fertilisers, in proportion to their content of ammonium nitrate, together with other marginal substances and nutrients.

(4) Following an expiry review initiated in January 2006, the Council, by Regulation (EC) No 442/2007 [6], renewed these measures at their current level for two years. The measures consist of specific duties.

2. Request for a review

(5) A request for a partial interim review pursuant to Article 11(3) of the basic Regulation was lodged by Open Joint Stock Company (OJSC) Azot Cherkassy (the applicant), an exporting producer from Ukraine. The request was limited in scope to dumping as far as the applicant is concerned.

(6) In its request pursuant to Article 11(3) of the basic Regulation, the applicant claimed that the circumstances with regard to dumping, on the basis of which the measures in force were established, had changed and that these changes were of a lasting nature. The applicant further alleged that a comparison of normal value based on its own costs or domestic prices and export prices to the Community would lead to a reduction of dumping significantly below the level of the current measures. Therefore, it claimed that the continued imposition of measures at the existing levels was no longer necessary to offset dumping.

3. Investigation

(7) Having determined, after consulting the Advisory Committee, that the request contained sufficient *prima facie* evidence, the Commission announced on 19 December 2006 the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation by a notice of initiation published in the *Official Journal of the European Union* [7].

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 23, 25.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 945/2005 (OJ L 160, 23.6.2005, p. 1).
[3] OJ L 182, 19.5.2004, p. 28.
[4] OJ L 183, 20.5.2004, p. 13.
[5] OJ L 344, 20.11.2004, p. 24.
[6] OJ L 106, 24.4.2007, p. 1.
[7] OJ C 311, 19.12.2006, p. 57.

(8) The review was limited in scope to the examination of dumping in respect of the applicant. The investigation of dumping covered the period from 1 October 2005 to 30 September 2006 (the review investigation period or RIP).

(9) The Commission officially informed the applicant, the representatives of the exporting country and the association of Community producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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

(11) In order to obtain the information deemed necessary for its investigation, the Commission sent the questionnaire to the applicant and received the reply within the deadline set for that purpose.

(12) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out verification visits at the applicants premises in Cherkassy.

(13) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the present review be terminated and that the existing anti-dumping measures be maintained on imports of the product concerned by the applicant, and the parties were given an opportunity to comment. The comments received were duly considered and taken into account, where appropriate.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(14) The product concerned is the same as in the original investigation as clarified by Regulation (EC) No 945/2005, namely solid fertilisers with an ammonium nitrate content exceeding 80 % by weight originating in Ukraine, falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91 (hereinafter referred to as AN). AN is a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid, and its nitrogen content exceeds 28 % by weight in prilled or granular form.

2. Like product

(15) This review investigation confirmed what was established in the original investigation — that AN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. The AN manufactured and sold by the applicant on its domestic market in Ukraine and the one exported to the Community have the same basic physical and chemical characteristics and essentially the same uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to the determination of dumping as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

C. RESULTS OF THE INVESTIGATION

1. Normal value

(16) In order to establish the normal value, it was first verified that the total domestic sales of the applicant were representative in accordance with Article 2(2) of the basic Regulation, namely that the total volume of such sales represented at least 5 % of the total export sales volume of the applicant to the Community. The investigation showed that the applicant sold only one type of AN and that this type was sold in representative quantities on the domestic market.

(17) The Commission subsequently examined whether the domestic sales of AN could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by comparing domestic net sales price with the calculated cost of production.

(18) When the applicants cost of production was assessed, it was found that gas costs were not reasonably reflected in the applicants records. It should be noted that energy costs, such as gas, represent a major proportion of the manufacturing cost and a significant proportion of the total cost of production.

(19) As regards gas costs, it was found that Ukraine is importing the majority of the gas consumed in the production of AN from Russia. In this regard, all available data indicate that Ukraine imports natural gas from Russia at prices which are significantly below market prices paid in unregulated markets for natural gas. The investigation revealed that the price of natural gas from Russia when exported to the Community was approximately twice as high as the domestic gas price in the Ukraine. Therefore, as provided for in Article 2(5) of the basic Regulation, the gas costs borne by the applicant were adjusted on the basis of information from other representative markets.

(20) Following disclosure, the applicant argued that any adjustment of its gas price paid on the domestic market would be unwarranted because the accounting records of the company fully reflected the costs associated with the activity of production and sales of the like product in the country of origin.

(21) However, when the cost of production of the like product under Article 2(5) of the basic Regulation is examined, it must be determined whether the costs as booked in the companys accounts reasonably reflect the costs associated with the production and sale of the product under investigation. For the reasons set out in recital 19, this was found not to be the case.

(22) Furthermore, the applicant claimed that its normal value should be based on its sales of the product concerned on its domestic market alleging that there is no reason to consider that these sales were not made in the ordinary course of trade. In this regard, it should be noted that in order to establish whether domestic sales were made in the ordinary course of trade by reason of price, namely whether they were profitable, it must first be established whether the costs of the applicant were a reliable basis within the meaning of Article 2(5) of the basic Regulation. Only after costs have been reliably established, can it be determined which methodology to establish normal value should be used. As outlined in recitals 28 and following, since the comparison of domestic net sales price with the adjusted cost of production during the RIP showed that no domestic sales were made in the ordinary course of trade, domestic prices of the applicant could not be used for the establishment of the normal value.

(23) The applicant also argued that the investigation was based on data during the RIP and that the conclusions did therefore not take into account developments after this period such as, in particular, the continuous increase of gas prices and the increase in domestic consumption of fertilisers in Ukraine. In this respect, it should be recalled that in accordance with Article 6(1) of the basic Regulation, for the purpose of a representative finding, an investigation period is to be selected which, in the case of dumping, is normally to cover a period of not less than six months immediately before to the initiation of the proceeding. It is also recalled that in line with usual Community practice, the RIP concerning dumping lasted one year.

(24) It was considered whether the development of gas prices in Ukraine subsequent to the RIP should have been taken into consideration when determining the dumping margin of the applicant. In this regard, it should be noted that in accordance with Article 6(1) of the basic Regulation, information relating to a period subsequent to the investigation period is, normally, not to be taken into account. In line with consistent Community practice, this was interpreted as meaning that events relating to a period subsequent to the IP can only be taken into account if they are manifest, undisputed and lasting. In this regard, although an increase in gas prices could be observed after the RIP, it could not be established with sufficient certainty that this price increase was indeed of a lasting nature. It was found that the information available on future developments of gas prices in Ukraine consisted in mere estimates rather than verifiable information in relation to actual gas prices. Article 6(1) allows the use of information and data outside the IP (or in cases of reviews the RIP) only under very exceptional circumstances. The situation in the present case was not considered such as to justify the use of data or information outside the RIP. Furthermore, the applicant did not substantiate its arguments as no evidence was submitted to show that data relating to a period after the RIP are more representative than those relating to the RIP. The argument was therefore rejected.

(25) As for the fact that the consumption of fertilisers in Ukraine has increased after the RIP, the applicant did not explain or show to what extent this fact could have an impact on the findings made on the basis of the information related to the RIP. Thus, the applicant did not submit sufficient information on the basis of which meaningful conclusions could have been drawn, nor was any other information available which could have supported the applicant's claim in this regard. Since any conclusions on this basis would have been speculative the applicants claim was rejected.

(26) The adjusted gas price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs. Waidhaus, being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be considered a representative market within the meaning of Article 2(5) of the basic Regulation.

(27) The applicant further argued that Ukraine purchases gas at similar market conditions as the Community and that the prices paid for gas by the applicant in 2007 were higher than the gas price at the Ukrainian-Russian border in the same period. However, the applicant did not submit any evidence to substantiate its claims and has thus failed to show that the conditions mentioned in recital 24 for taking into account events relating to a period subsequent to the RIP are fulfilled. The argument was therefore rejected.

(28) The comparison of domestic net sales price with the adjusted cost of production during the RIP showed that no domestic sales were made in the ordinary course of trade pursuant of Article 2(4) of the basic Regulation.

(29) It was therefore considered that domestic prices did not provide an appropriate basis for the establishment of the normal value and another method had to be applied. In accordance with Articles 2(3) and 2(6) of the basic Regulation, normal value was constructed by adding to the applicants manufacturing costs of the product concerned, adjusted where necessary as mentioned in recital 19, a reasonable amount for SG&A costs and a reasonable amount for profit.

(30) SG&A costs and profit could not be established on the basis of the introductory wording of Article 2(6) of the basic Regulation because the applicant did not have representative domestic sales of the product concerned in the ordinary course of trade. Article 2(6)(a) of the basic Regulation could not be applied, since only the applicant is subject to the investigation. Article 2(6)(b) was not applicable either, since the applicants manufacturing cost for products belonging to the same general category of goods would also need to be adjusted in respect of gas costs, for the reasons indicated in recital 19. Therefore, SG&A costs and profit were established pursuant to Article 2(6)(c) of the basic Regulation.

(31) The North American market showed a significant volume of domestic sales and a considerable level of competition from both domestic and foreign companies. In this respect, consideration was given to publicly available information relating to major companies operating in the fertilisers business sector. It was found that the corresponding data from North American (USA and Canadian) producers would be the most appropriate for the purpose of the investigation, given the extensive availability of reliable and complete public financial information from listed companies in this region of the world. Therefore, SG&A costs and profit were established on the basis of the weighted average SG&A costs and profit from three North American producers, which were found to be amongst the largest companies in the nitrogen fertilisers sector, with regard to their domestic sales of the same general category of products (nitrogen fertilisers). These three producers were considered to be representative of the nitrogen fertilisers business and their SG&A costs and profit thereby representative of those normally incurred by companies operating successfully in that business segment. It should be noted that there were no indications that the amount for profit so established exceeded the profit realised by other Ukrainian producers on sales of products of the same general category on their domestic market.

(32) Following the disclosure the applicant alleged that there was a significant difference between the market situation in North America and Ukraine. The applicant however failed to explain the alleged difference and to substantiate its claims. It also failed to propose any other reasonable basis for calculations, in the absence of which this argument had to be rejected.

2. **Export price**

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

3. **Comparison**

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

(35) After disclosure, the association of Community producers argued that the rail tariffs in Ukraine for transport of, *inter alia*, the product concerned when exported to the Community were artificially low and therefore needed to be adjusted. The investigation did not reveal however that transport costs in Ukraine were not reasonably reflected in the records of the applicant. This claim therefore had to be rejected.

4. **Dumping margin**

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

(37) This comparison showed a dumping margin of 38,2 %, expressed as a percentage of the cif Community frontier price, duty unpaid.

5. **Lasting nature of the changed circumstances**

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

(39) In this context, it was noted that the dumping margin currently applicable to the applicant was established in the original investigation using a normal value determined on the basis of data obtained from a producer in a market-economy third country in accordance with Article 2(7) of the basic Regulation. However, in the present review normal value was calculated based on information relating to the applicants own data in accordance with Article 2(1) to (6) of the basic Regulation, following the granting of market-economy status to Ukraine (amendment of the basic Regulation by Regulation (EC) No 2117/2005).

(40) There were no indications that the level of the normal value or the export price established for the applicant in the current investigation could not be considered of a lasting nature. It could be argued that the evolution of the prices of natural gas as the main raw material could have a significant influence on the normal value. It was, however, considered that the effect of the price increase would affect all actors on the market and therefore have an impact on both the normal value and the export price.

(41) The export price of the applicant to the Community during the RIP was found to be similar to that of its exports to other countries, where considerably higher quantities were sold during the RIP.

(42) Therefore, although the dumping margin found in the RIP is based on a relatively low volume of exports of the applicant to the Community, there are reasons to consider that the dumping margin found is based on changed circumstances of a lasting nature.

D. **TERMINATION OF THE REVIEW**

(43) Since in the original investigation the duty was imposed in the form of a specific amount per tonne, it should have the same form in the current investigation. The duty calculated on the basis of the current margin of dumping would be EUR 47 per tonne.

(44) It is recalled that, as outlined in recital 59 of Regulation (EC) No 132/2001, when imposing definitive measures in 2001, the injury margin was used when determining the amount of the definitive duty to be imposed in accordance with the lesser duty rule. As defined by Article 1(2) of Regulation (EC) No 442/2007, the duty currently in force depends on the specific product type and varies between EUR 29,26 per tonne and EUR 33,25 per tonne.

(45) Since the duty established on the basis of the current margin of dumping is higher than the current duty, the review should be terminated without amending the level of the duty applicable to the applicant, which should be maintained at the level of the definitive anti-dumping duty rate established in the original investigation.

E. **UNDERTAKINGS**

(46) The applicant expressed an interest in offering an undertaking but failed to submit a sufficiently substantiated undertaking offer within the deadlines set in Article 8(2) of the basic Regulation. Consequently no undertaking offer could be accepted by the Commission. However, it is considered that the complexity of several issues, namely (1) the volatility of the price of the product concerned which would require some form of indexation of minimum prices, while at the same time the volatility is not sufficiently explained by the key cost driver; and (2) the particular market situation for the product concerned (*inter alia*, that there are limited imports from the exporter subject to this review) points to the need to consider whether an undertaking combining an indexed minimum price and a quantitative ceiling would be workable.

(47) As mentioned above, due to this complexity the applicant could not formulate an acceptable undertaking offer within the statutory deadline. As a result, the Council considers that the applicant should exceptionally be allowed to complete its undertaking offer beyond the statutory deadline but within 10 calendar days from entry into force of this Regulation.

F. **DISCLOSURE**

(48) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present review and to maintain the existing anti-dumping duty on imports of the product concerned produced by the applicant. All parties were given an opportunity to comment. Their comments were taken into account where warranted and substantiated by evidence,

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim of the anti-dumping measures applicable to imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight originating in Ukraine, falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated without amending the anti-dumping measures in force.

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

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

Done at Brussels, 10 March 2008.

For the Council
The President
D. RUPEL

COUNCIL REGULATION (EC) No 238/2008

of 10 March 2008

terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of solutions of urea and ammonium nitrate originating in Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 1995/2000 [2], the Council imposed a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate (UAN) originating, *inter alia*, in Russia. This Regulation will hereinafter be referred to as 'the original Regulation' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

(2) Following an expiry review initiated in September 2005, the Council, by Regulation (EC) No 1911/2006 [3], renewed for five years these measures at their current level. The measures consist of specific duties. This regulation will hereinafter be referred to as 'the expiry Regulation' and the investigation that led to the measures imposed by the expiry Regulation will be hereinafter referred to as 'the expiry review'.

2. Request for a review

(3) A request for a partial interim review (the present review) pursuant to Article 11(3) of the basic Regulation was lodged by two exporting producers from Russia, belonging to the Joint Stock Company 'Mineral and Chemical Company Eurochem', namely Novomoskovskiy Azot and Nevinnomyssky Azot. These two companies, due to their relationship, are treated as one legal entity (the applicant) for the purpose of the present review. The request was limited in scope to dumping as far as the applicant is concerned.

(4) The applicant alleged that the comparison of its own normal value and, in the absence of exports to the European Community, export prices to an appropriate third country, in this case, the United States of America (USA), would lead to a reduction of dumping significantly below the level of the current measures.

3. Investigation

(5) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence, the Commission announced on 19 December 2006 the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation by a notice of initiation published in the *Official Journal of the European Union* [4].

(6) The review was limited in scope to the examination of dumping in respect of the applicant. The investigation of dumping covered the period from 1 October 2005 to 30 September 2006 (the review investigation period or RIP).

(7) The Commission officially informed the applicant, the representatives of the exporting country and the association of Community producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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

(9) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to Joint Stock Company 'Mineral and Chemical Company Eurochem' and its related companies and received replies within the deadlines set for that purpose.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 238, 22.9.2000, p. 15. Regulation as last amended by Regulation (EC) No 1675/2003 (OJ L 238, 25.9.2003, p. 4).
[3] OJ L 365, 21.12.2006, p. 26.
[4] OJ C 311, 19.12.2006, p. 51.

(10) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out verification visits at the premises of the applicant and its related companies:

— JSC Mineral and Chemical Company (Eurochem), Moscow, Russia,

— PJSC Azot (NAK Azot), Novomoskovsk, Russia,

— PJSC Nevinnomyssky Azot (Nevinka Azot), Nevinnomyssk, Russia, and

— Eurochem Trading GmbH, Zug, Switzerland — (Eurochem Trading).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(11) The product concerned is the same as in the original investigation, i.e. a solution of urea and ammonium nitrate, a liquid fertiliser commonly used in agriculture, originating in Russia (UAN). It consists of a mixture of urea, ammonium nitrate and water. The water content is approximately 70 % of the mixture (depending on the nitrogen content), the remaining part consisting equally of urea and ammonium nitrate. The nitrogen (N) content is the most significant 'feature' of the product, and it can vary between 28 % and 32 %. Such variation can be obtained by adding more or less water to the solution. However, whatever their nitrogen content, all solutions of urea and ammonium nitrate are considered to have the same basic physical and chemical characteristics and therefore constitute a single product for the purpose of this investigation. The product concerned falls within CN code 3102 80 00.

2. Like product

(12) This review investigation confirmed that UAN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. The UAN solutions manufactured and sold by the applicant on its domestic market in Russia and, in the absence of exports to the European Community, those exported to the United States of America have the same basic physical and chemical characteristics and essentially the same uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to the determination of dumping as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

C. RESULTS OF THE INVESTIGATION

1. Preliminary remarks

(13) As announced in the notice of initiation, since the applicant did not have export sales of UAN to the European Community during the RIP, the current investigation examined first to what extent export prices to a third country should be used in deciding whether the basis on which existing measures were established has changed and whether these changes are of a lasting nature.

(14) The applicant supplied evidence that due to the duties in force, the product could not be sold for export to the Community market during the RIP. The applicant provided *prima facie* evidence that export prices to the USA, a representative third market, were not dumped or at least to a lesser extent than the dumping margin currently established for exports to the European Community and that it was appropriate to use export prices to the USA. For the reasons set out in recital 43 and following, export prices to the third country USA were found to be appropriate because the US market was comparable to the Community market and therefore representative.

(15) It should be noted that the measures currently applicable are partly based on data not linked to the applicant's own production and sales of the product concerned, while during the current RIP verified information related to the applicant's own data pertaining to the normal value and export prices, albeit to a third country market, was available. On this basis, it was concluded that the dumping margin found during the current RIP reflected more accurately the situation of the applicant during the RIP than the measures currently in force.

(16) In this context, it was also considered that the objective of an anti-dumping duty is not to close the Community market from third country imports but to restore a fair level playing field.

(17) Given the above specific circumstances, it was therefore concluded that the calculation of the dumping margin during the RIP on the basis of export sales prices of the applicant to the USA was appropriate.

2. **Normal value**

(18) In order to establish the normal value, it was first verified that the total domestic sales of the applicant were representative in accordance with Article 2(2) of the basic Regulation. Since the applicant did not have export sales of UAN to the European Community during the RIP, overall domestic sales quantities of the applicant were compared to all exports of UAN by the applicant to the United States. In accordance with Article 2(2) of the basic Regulation, domestic sales should be considered representative in case the total volume of such sales is equal to or greater than 5 % of the total volume of the corresponding export sales, in this case to the United States. The investigation showed that the applicant did not sell representative quantities of UAN on the domestic market.

(19) Since on this basis the domestic prices of the applicant could not be used to establish normal value, normal value was constructed on the basis of the manufacturing costs incurred by the applicant plus a reasonable amount for selling, general and administrative costs (SG&A costs) and for profits, in accordance with Article 2(3) and (6) of the basic Regulation.

(20) Regarding the cost of manufacturing, it should be noted that gas costs represent a major proportion of the manufacturing cost and a significant proportion of the total cost of production. In accordance with Article 2(5) of the basic Regulation, it was examined whether the costs associated with the production and sales of the product concerned were reasonably reflected in the records of the applicant.

(21) It was established on the basis of data published by internationally recognised sources specialised in energy markets, that the prices paid by the applicant were abnormally low. By way of illustration, they amounted to one forth and one fifth of the export price of natural gas from Russia. In this regard, all available data indicates that domestic gas prices in Russia were regulated prices, which are far below market prices paid in unregulated markets for natural gas. Since gas costs were not reasonably reflected in the applicant's records, they had to be adjusted accordingly. In the absence of any undistorted gas prices relating to the Russian domestic market, and in accordance with Article 2(5) of the basic Regulation, gas prices had to be established on 'any other reasonable basis, including information from other representative markets'.

(22) The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs and adjusted to reflect local distribution costs. Waidhaus, being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be considered a representative market within the meaning of Article 2(5) of the basic Regulation.

(23) Following disclosure, the applicant claimed that any adjustment of its gas price paid on the domestic market would be unwarranted alleging that its accounting records fully reflected the costs associated with the activity of production and sales of the like product in the country of origin. To substantiate this claim, the applicant provided a study from an independent consultancy firm that the gas price paid by the applicant reflected full cost of production and sale of gas, as incurred by the gas provider. It should first be noted that, as the study itself sets out, the costs of gas as well as the cost of the delivery of the gas to the applicant used for the comparison were estimated costs and thus not actual costs incurred during the RIP. It is also unclear whether the costs thus established were full costs as established in accordance with the basic Regulation, i.e. including full costs of manufacturing and full SG&A costs linked to the production and sale of gas. Finally, it is also noted that the information available on the gas provider's costs could not be verified within the framework of this proceeding.

(24) In any case, it is considered that under Article 2(5) of the basic Regulation, the sole fact that the price of gas charged by the supplier to its client is cost covering is as such not a criterion to establish whether the costs of production of the like product as booked in the company's accounts are reasonably reflecting the costs associated with the production and sale of the product under investigation. For the reasons set out above in recital 21, this was found not to be the case. The applicant did not address the apparent significant difference between the price for gas paid on the Russian domestic market and the export price of natural gas from Russia on the one hand and the one paid by the Community producers on the other hand. It did also not address the fact that domestic prices for natural gas were regulated in Russia and could not be considered to reasonably reflect a price normally payable in undistorted markets. Therefore, even if the gas price paid by the applicant covered the unit cost of production and sales of the gas incurred by its provider, this argument is irrelevant since the market price of gas is not necessarily directly linked to costs of its production and sales. The price at which the applicant was purchasing the gas during the RIP continues to be State regulated and significantly below the price level in non-regulated markets as explained in recital 21. This claim therefore had to be rejected.

(25) The applicant further claimed that by making a gas adjustment, *de facto* a methodology to determine normal value was used which is not foreseen by the basic Regulation. Thus, by replacing domestic gas costs by costs calculated as described in recital 22, and due to the fact that these costs constitute major part of the total costs of the like product and therefore also of the constructed normal value, the normal value would be *de facto* determined by data from a third 'representative' market. In this regard, the applicant argued that for market economy countries, the basic Regulation however foresees, only the following methodologies to determine the normal value: (i) on the basis of the domestic price of the like product in the ordinary cause of trade, or alternatively, in case sales are not made in the ordinary course of trade, (ii) on the basis of the cost of production in the country of origin (plus a reasonable amount for SG&A costs and for profits) or (iii) representative export prices of the like product to an appropriate third country. The applicant concluded that on this basis normal value should not be based on data from a third representative market.

(26) In this regard and as also outlined in recitals 18 to 42, it should first be noted that normal value was established in accordance with the methodologies outlined in Article 2(1) to (6) of the basic Regulation. However, in order to establish whether domestic sales were made in the ordinary course of trade by reason of price, i.e. whether they were profitable, it must first be established whether the costs of the applicant were a reliable basis within the meaning of Article 2(5) of the basic Regulation. Only after costs have been reliably established, can it be determined which methodology to establish normal value should be used. It is therefore wrong to claim that by determining reliable costs in accordance with Article 2(5) of the basic Regulation a new methodology to determine normal value was introduced. The applicants arguments in this respect therefore had to be rejected.

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

(28) Firstly, it should be noted that one of the primary criteria for the choice of the basis on which to establish the gas prices was that it reasonably reflects a price normally payable in undistorted markets. It is undisputed that this condition is met with respect to the prices at Waidhaus. Furthermore, by far the greatest volume of gas from Russia is imported via the Waidhaus hub which represents therefore an appropriate basis for an adjustment. On this basis, Waidhaus was considered as a representative market and a reasonable basis for the determination of gas costs within the meaning of Article 2(5) of the basic Regulation. Secondly, as outlined in recital 24, it is on its own irrelevant whether the price is cost driven as long as it reasonably reflects a price normally payable in undistorted markets. As regards the price of gas imported at Waidhaus, there are no indications of State interference in price forming and this condition is thus met. Finally, as regards the claim about non-competitive domestic pricing on gas in Germany it should be noted that the Bundeskartellamts investigation, to which the applicant referred to, is still ongoing and no conclusions were reached. Besides, this investigation concerns prices at which German main gas distributors sell the gas on the German domestic market and not the price at which they purchase the gas imported from Russia. In contrast to what was claimed by the applicant, these two prices are not necessarily related since the economic interest of gas distributors and their customers is exactly the opposite. Thus, it can be presumed that the distributors aim to keep the resale price at the highest possible level whereby at the same time it is in their economic interest to keep the purchase price at the lowest possible level in order to maximise profit levels. The applicants argument that the German incumbents do not have an incentive to negotiate low prices for Russian imported gas at Waidhaus is a mere presumption without any factual background. Consequently, these arguments were rejected.

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

(30) The applicant further argued that domestic prices for natural gas in Russia regulated by the State are increasing constantly and reaching levels covering the cost of production of gas. Therefore, the price on the domestic market cannot be considered as uncompetitive or unreasonably low.

(31) This argument has no grounds since the correct standard for choosing a representative market is not whether prices are profitable as such but whether prices reasonably reflect a price normally payable in undistorted markets, as explained in recital 29. This is not the case for prices regulated by the State. Furthermore, this argument also contradicts public statements of the Russian gas supplier (as confirmed by its published audited accounts) that the Russian domestic gas prices do not cover production, transportation and sales cost. Therefore, this argument was rejected.

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

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

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

(35) In this context, the applicant also claimed that the mark-up of the local distributor should not be added to the export price at Waidhaus claiming that profits of the distributors would already be included in the price at Waidhaus. In this regard, the applicant claimed that the local distributors in Russia were fully owned subsidiaries of the gas supplier and therefore, addition of the profit of these distributors could constitute double counting. The applicant also claimed that natural comparative advantage of Russia should be taken into account. It argued further that since gas is largely available in Russia but not in the Community, domestic prices in Russia would be naturally lower than the price of the exported gas, which should have been taken into account when determining the adjustment to the gas prices paid on the domestic market.

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

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

(38) Moreover, the applicant, who has the burden proof, was not able to submit any further information or evidence which showed whether and to what extend distribution cost were indeed included in the Waidhaus price. However, since domestic customers were purchasing the gas from local suppliers, it had to be assumed that they would have to pay local distribution costs which are not as such included in the unadjusted Waidhaus price. Therefore, at this stage of the proceeding it had to be considered that this adjustment was warranted and consequently the argument was rejected.

(39) However, the Community Institutions also considered that the impact on the calculation of the dumping margin of this specific adjustment may be significant. Therefore, given the particular situation described in recital 37, it was considered that if the applicant supplies sufficient verifiable evidence, the Commission may consider the re-opening of the investigation in this regard.

(40) As far as the claimed comparative advantages are concerned regarding the availability of natural gas in Russia, it should be noted that as mentioned in recital 28, the primary criterion for the choice of Waidhaus prices as a basis on which to establish the gas prices is that they reasonably reflect a price normally payable in undistorted markets. The market conditions prevailing in the domestic market are irrelevant in this context. This argument had therefore to be rejected.

(41) SG&A costs and profit could not be established on the basis of the chapeau of Article 2(6), first sentence, of the basic Regulation because, after the adjustment for the gas cost mentioned in recital 22, the applicant did not have representative domestic sales of the product concerned in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. Article 2(6)(a) of the basic Regulation could not be applied, since only the applicant is subject to the investigation. Article 2(6)(b) was not applicable either, since for products belonging to the same general category of goods natural gas is likewise the by far most important raw material and therefore manufacturing costs would very likely also need to be adjusted, for the reasons indicated in recital 21. In the framework of this interim review, no information was available to properly quantify such adjustment and to establish SG&A costs and the relevant profit margins when selling these products after such adjustment. Therefore, SG&A costs and profit were established pursuant to Article 2(6)(c) of the basic Regulation on the basis of a reasonable method.

(42) In this respect, consideration was given to publicly available information relating to major companies operating in the nitrogen fertilisers business sector. It was found that the corresponding data from North American (USA and Canada) producers would be the most appropriate for the purpose of the investigation, given the large availability of reliable and complete public financial information from listed companies in this region of the world. Moreover, the North American market showed a significant volume of domestic sales and a considerable level of competition from both domestic and foreign companies. Therefore, SG&A costs and profit were established on the basis of the weighted average of SG&A costs and profit from three North American producers, which were found to be amongst the largest companies in the fertilisers sector, with regard to their North American sales of the same general category of products (nitrogen fertilisers). These three producers were considered to be representative of the nitrogen fertilisers business (on average over 78,15 % of the turnover of the company/business segment) and their SG&A costs and profit as representative of the same type of costs normally incurred by companies operating successfully in that business segment. Furthermore, there is no indication suggesting that the amount for profit so established exceeds the profit normally realised by Russian producers on sales of products of the same general category on their domestic market.

3. **Export price**

(43) As mentioned in recital 13, the applicant did not have export sales of UAN to the European Community during the RIP. Therefore, for the reasons set out in recitals 14 to 17 it was considered appropriate to examine the pricing behaviour of the applicant to other export markets in order to calculate the dumping margin. In the notice of initiation, the USA was envisaged as an appropriate market for comparison purposes, being the applicants major export market representing over 70 % of the applicants export quantities during the RIP.

(44) None of the interested parties commented on the choice of the USA as the most appropriate market for comparison purposes. The investigation confirmed that the USA market for UAN is the most appropriate for the purpose of comparison since the European Community and the USA represent the two major UAN markets in the world, which are comparable both in terms of volume and prices.

(45) Since export sales of the applicant to the USA during the RIP were made via a related trader located in Switzerland, the export price had to be established in accordance with Article 2(9) of the basic Regulation. Thus, the export price was constructed on the basis of prices actually paid or payable to the applicant by the first independent customer in the USA, its major export market. A notional commission corresponding to the mark-up of the related trader, which can be considered similar to the role of an agent acting on a commission basis was deducted from these prices.

4. **Comparison**

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

5. **Dumping margin**

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

(48) This comparison showed a dumping margin of 33,95 %, expressed as a percentage of the cif North American frontier price, duty unpaid.

6. **Lasting nature of the circumstances prevailing during the RIP**

(49) In accordance with Article 11(3) of the basic Regulation, it was examined whether the circumstances on the basis of which the current dumping margin was based have changed and whether such change was of a lasting nature.

(50) There were no indications that the level of the normal value or the export price established for the applicant in the current investigation could not be considered of a lasting nature. Although it could be argued that the evolution of the prices of natural gas as the main raw material could have a significant influence on the normal value, it was considered that the effect of a price increase would affect all actors on the market and therefore have an impact on both the normal value and the export price.

(51) The export price of the applicant to the United States of America, the applicant's major export market, during the RIP was found to be similar to that of its exports to other countries.

(52) Therefore, there are reasons to consider that the dumping margin found is based on changed circumstances of a lasting nature.

(53) In addition, the present review did not reveal any indication or evidence that the basis on which the injury elimination level was established during the original investigation will significantly change in the foreseeable future.

(54) In this regard, it is noted that although the circumstances on the basis of which the determination of dumping was based have changed since the imposition of the definitive duties, which resulted in a higher dumping margin during the RIP as compared to the original IP, and although there are reasons to consider that the dumping margin found is based on changed circumstances of a lasting nature, the level of the anti-dumping duty in force should remain the same. Indeed, as mentioned in recitals 55 and 56, the definitive anti-dumping duties were imposed at the level of the injury elimination level as found during the original investigation.

D. **TERMINATION OF THE REVIEW**

(55) It is recalled that, in accordance with Article 9(4) of the basic Regulation and as outlined in recital 49 of Council Regulation (EC) No 1995/2000, the definitive duty in the original investigation was established at the level of the injury margin found, which was lower than the dumping margin because it was found that such lesser duty would be adequate to remove the injury to the Community industry. In the light of the foregoing, the duty established in this review should not be higher than the injury margin established in the original investigation.

(56) No individual injury margin can be established in this partial interim review, since it is limited to the examination of dumping as far as the applicant is concerned. Therefore, the dumping margin established in the present review was compared to the injury margin as established in the original investigation. Since the latter was lower than the dumping margin found in the present investigation, this review should be terminated without amending the anti-dumping measures in force.

E. **UNDERTAKINGS**

(57) The applicant expressed an interest in offering an undertaking but failed to submit a sufficiently substantiated undertaking offer within the deadlines set in Article 8(2) of the basic Regulation. Consequently, no undertaking offer could be accepted by the Commission. However, it is considered that the complexity of several issues, namely (1) the volatility of the price of the product concerned which would require some form of indexation of minimum prices, while at the same time the volatility is not sufficiently explained by the key cost driver; and (2) the particular market situation for the product concerned (*inter alia*, that there were no imports from the exporter subject to this review during the RIP) points to the need to further consider whether an undertaking combining an indexed minimum price and a quantitative ceiling would be workable.

(58) As mentioned above, due to this complexity, the applicant could not formulate an acceptable undertaking offer within the statutory deadline. In view of the above, the Council considers that the applicant should exceptionally be allowed to complete its undertaking offer beyond the abovementioned deadline but within 10 calendar days from entry into force of this regulation.

F. **DISCLOSURE**

(59) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present review and to maintain the existing anti-dumping duty on imports of the product concerned produced by the applicant. All parties were given an opportunity to comment. Their comments were taken into account where warranted and substantiated by evidence,

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review of the anti-dumping measures applicable to imports of mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution originating in Russia, currently classifiable within CN code 3102 80 00, initiated pursuant to Article 11(3) of Council Regulation (EC) No 384/96, is hereby terminated without amending the measures in force.

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

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

Done at Brussels, 10 March 2008.

For the Council
The President
D. RUPEL

COUNCIL REGULATION (EC) No 239/2008

of 17 March 2008

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation) and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) On 20 December 2006, the Commission published a notice [2] initiating an anti-dumping proceeding on imports into the Community of coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China (the PRC). On 19 September 2007, the Commission, by Regulation (EC) No 1071/2007 [3] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of Coke 80+ originating in the PRC.

(2) It is noted that the proceeding was initiated following a complaint lodged by three Community producers, representing around 40 % of the total Community production of Coke 80+. It is noted that an understated figure of 'more than 30 %' was mentioned in recital 2 of the provisional Regulation; however, following further investigation it was found that the complainants in fact represented around 40 % of the total Community production.

(3) As set out in recital 12 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2003 to the end of the IP (period considered).

B. SUBSEQUENT PROCEDURE

(4) Following the imposition of provisional anti-dumping duties on imports of Coke 80+ originating in the PRC, several interested parties submitted comments in writing. The parties who so requested were also granted the opportunity to be heard.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission intensified the investigation with regard to Community interest aspects. In this connection, one additional verification visit was carried out after the imposition of the provisional measures at the following company:

— La Fonte Ardennaise, Vivier-Au-Court, France — user in the Community.

(6) In addition, an information-gathering visit was made to the European Foundry Association (CAEF) in Düsseldorf, Germany. In order to clarify certain alleged implementation problems, a visit was also carried out to customs authorities in Antwerp, Belgium as well as in Duisburg, Germany.

(7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of Coke 80+ originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ C 313, 20.12.2006, p. 15.
[3] OJ L 244, 19.9.2007, p. 3.

C. **PRODUCT CONCERNED AND LIKE PRODUCT**

(9) In the absence of any comments concerning the product concerned and like product, recitals 13 to 17 of the provisional Regulation are hereby confirmed.

(10) In view of the above, it is definitively concluded that the product concerned and Coke 80+ produced and sold in the analogue country, the USA, as well as the one produced and sold by the Community industry on the Community market are alike, within the meaning of Article 1(4) of the basic Regulation.

D. **DUMPING**

(11) In the absence of any comments concerning the level of cooperation, the selection of the analogue country and the determination of normal value, recitals 18 to 28 of the provisional Regulation are hereby confirmed.

(12) With reference to price comparison, the sole cooperating exporter objected to the rejection by the Commission of its claim relating to post-screening operations in the dumping calculation, arguing that a similar claim had been taken into consideration for the purpose of injury calculations. The claim was therefore accepted and an additional adjustment was made to the normal value.

(13) The estimation of the value of the adjustment made for differences in physical characteristics at provisional stage has been reviewed to reflect the value of the differences in calorific value indicators and size spread between the product produced in the analogue country and the Chinese exported product.

(14) In the absence of any other comments in this respect, recitals 29 to 31 of the provisional Regulation are hereby confirmed.

(15) The definitive dumping margin was established on the basis of a comparison of a weighted average ex-works normal value with a weighted average ex-works export price, in accordance with Article 2(11) and (12) of the basic Regulation. After applying the adjustments referred to in recitals 12 and 13, the revised definitive country-wide dumping margin, expressed as a percentage of the cif Community frontier price, duty unpaid, is 61,8 %.

E. **INJURY**

1. **Community production and Community industry**

(16) In the absence of any comments concerning the definition of Community production and Community industry, recitals 34 and 35 of the provisional Regulation are hereby confirmed.

2. **Community consumption**

(17) As set out in recital 36 of the provisional Regulation, the Commission continued its investigation in particular as regards one component of the Community consumption, namely the import volumes during the period considered. However, no new and substantiated information was received in this respect. Therefore, and in the absence of any arguments from any interested parties putting into question the method used to establish the Community consumption, recitals 36 and 37 of the provisional Regulation are hereby confirmed.

3. **Imports from the country concerned**

(a) *Volume and market share of the imports concerned; import prices*

(18) As set out in recitals 36 and 41 of the provisional Regulation, the Commission continued its investigation on the import volumes and prices during the period considered. It is noted that there was a clerical error in recital 42 of the provisional Regulation as prices decreased by 43 % from 2004 to the IP and not by 35 %, as stated in the said recital.

(19) However, no new and substantiated information was received regarding import volumes and prices. Therefore, and in the absence of any arguments from any interested parties questioning the method used to establish the volume and prices of the imports concerned, recitals 38 to 42 of the provisional Regulation are hereby confirmed.

(b) *Price undercutting*

(20) The cooperating exporting producer and one user have argued that in order to carry out the undercutting calculation on a fair basis, when comparing the prices charged by the Community industry for the like product and the import prices of the product concerned, an adjustment should be made for differences in physical characteristics. Certain Community industry producers, on the other hand, argued that while in a hypothetical situation Coke 80+ from some Community producers may

warrant a higher price based on specific quality characteristics, the data available to the Commission establish that the users do not pay any higher price for the better quality characteristics, particularly in an environment of suppressed prices caused by predatory dumping. According to these Community industry producers, the user industry's purchase decisions are, instead, solely based on the price quoted for the Chinese product. Therefore, adjustments for differences in physical characteristics are not warranted. However, since the verified information provided by interested parties suggests that there are differences between the moisture, ash, volatile material and sulphur content of the like product and the product concerned, which under normal market conditions could be expected to have an effect on prices, the claim of the cooperating Chinese producer and the user was accepted and an additional adjustment was made to take into account these differences.

(21) Furthermore, in order to compare the product concerned and the Coke 80+ produced by the Community industry at the same level of trade, in addition to those post-importation costs incurred by importers in the Community that were mentioned in recital 43 of the provisional Regulation, an adjustment was made in the price undercutting calculation also for unloading costs. For the sake of clarity it is also mentioned that an adjustment for the profit margin of unrelated importers was made in the price undercutting calculation already at the provisional stage, albeit not specifically mentioned in recital 43 of the provisional Regulation. This adjustment has been made on the basis of the verified profitability reported by the cooperating unrelated importer during the IP, being in the range of 5-10 % ([1]).

(22) The provisional undercutting margin for the PRC was accordingly amended and it is concluded that, during the IP, the product concerned originating in the PRC was sold in the Community at prices which undercut the Community industry's sales prices, when expressed as a percentage of the latter, by 5,7 %.

4. **Situation of the Community industry**

(23) In the absence of any new and substantiated information or argument concerning production, production capacity and capacity utilisation rates, sales volume, market share, growth, stocks, investments and magnitude of the dumping margin, the findings in recitals 46 to 50, 53 to 54 and 60 to 61 of the provisional Regulation are hereby confirmed.

([1]) For confidentiality reasons, this figure is given only in ranges.

(a) *Sales prices in the Community*

(24) Sales prices in the Community stated in recital 51 of the provisional Regulation were corrected and are shown in the table below. The slight revisions do not affect the conclusions drawn with regard to the Community sales prices in recitals 51 and 52 of the provisional Regulation.

	2003	2004	2005	IP
Unit price EC market (EUR/tonne)	154	191	243	198
Index (2003 = 100)	100	124	158	129

(b) *Profitability, return on investment, cash flow and ability to raise capital*

(25) The calculation of the profitability figures as laid down in the provisional Regulation was revised and an error was corrected. The correct figures, presented in the table below, do not affect the conclusions on the general trend of the evolution of profitability of the Community industry, even though they give an even bleaker picture of the state of the Community industry: the profitability of the Community industry dropped dramatically from 16,2 % in the 2005 to – 3,8 % during the IP. Following that correction, also the figures on return on investments (ROI), expressed as the profit in percent of the net book value of investments, have been adjusted. Cash flow figures remain the same as in the provisional Regulation, but are presented in the table below for the sake of clarity.

	2003	2004	2005	IP
Profitability of EC sales to unrelated customers (% of net sales)	8,1 %	15,0 %	16,2 %	– 3,8 %
Index (2003 = 100)	100	185	200	– 47
ROI (profit in % of net book value of investments)	2,2 %	19,2 %	13,3 %	– 13,3 %
Index (2003 = 100)	100	460	340	– 180
Cash flow (1 000 EUR)	17 641	13 633	34 600	4 669
Index (2003 = 100)	100	77	196	26

(26) In the absence of any new comments in this particular regard, the conclusions set out in recital 58 of the provisional Regulation on the Community industry's ability to raise capital are hereby confirmed.

(c) *Employment, productivity and wages*

(27) Productivity figures of the Community industry's workforce stated in recital 59 of the provisional Regulation were also corrected and are shown in the table below. These corrected figures show that the productivity of the Community industry's workforce, measured as output (tonnes) per person employed per year, increased slightly from 2003 to the IP. In addition, the annual labour costs per employee are, for the sake of clarity, reproduced in more detailed figures than in the provisional Regulation.

	2003	2004	2005	IP
Number of employees	680	754	734	767
Index (2003 = 100)	100	111	108	113
Productivity (tonnes/employee)	1 211	1 348	1 299	1 266
Index (2003 = 100)	100	111	107	105
Annual labour cost per employee (EUR)	28 096	27 784	29 453	30 502
Index (2003 = 100)	100	99	105	109

5. **Conclusion on injury**

(28) Following disclosure of the provisional Regulation, one user claimed, with reference to recitals 64 and 67 of the provisional Regulation, that the Commission had based its provisional conclusions on injury — and consequently also causation — exclusively on the allegedly negative development of certain market indicators over a very short time period instead of assessing injury over a period of three to four years, as was the common practice. The user based this argument on an assumption that the Community industry was not suffering any injury up until the end of 2005, since the previous measures were allowed to lapse at the end of 2005. Since the IP ended in September 2006, this would mean that the injurious situation of the Community industry would have presented itself only during a few months in 2006.

(29) In this regard, it is noted firstly that recital 64 of the provisional Regulation, wherein reference is made to the development of certain injury indicators from 2005 to the IP, must be read in conjunction with the preceding recital 63, where the development of injury indicators up to 2005 is commented. It is clear from these recitals of the provisional Regulation concerning injury indicators, that the Commission followed its usual practice and examined the development of injury indicators over a period of almost four years, i.e. from the beginning of 2003 to September 2006. As is mentioned in recital 63, the year 2004 was an exceptional year in the Coke 80+ market, resulting from low supply on the market due to low imports from the PRC and closure of some plants previously producing Coke 80+ in the Community. The exceptional nature of the market situation in 2004, which was still reflected in the indicators of the following year, has not been disputed by any interested party. It is precisely because the peaks experienced in 2004 and 2005 are considered exceptional that the Commission, in this case, has had to pay particular attention to the development of injury indicators between 2003 and the IP. It is recalled that the key financial indicators, in particular profitability, experienced a dramatic drop not only from 2005 to the IP, but also when comparing 2003 to the IP.

(30) In addition, it should be noted that drawing any conclusions as to the state of the Community industry at the end of 2005 from the fact that producers in the Community did not follow through an application for an expiry review of the previous measures would be purely speculative.

(31) Therefore, the claim that the Commission has analysed the injury picture only concerning some months in 2006 must be rejected.

(32) The above revised factors, i.e. profitability, return on investment and productivity of the Community industry, leave unaffected the trends as set out in the provisional Regulation. Also the revised undercutting margin still remained well above the *de minimis* level. On this basis, it is considered that the conclusions regarding the material injury suffered by the Community industry as set out in the provisional Regulation are not altered. In the absence of any other new and substantiated information or arguments, they are therefore definitively confirmed.

F. **CAUSATION**

1. **Effect of the dumped imports**

(33) As mentioned in recital 22, it is definitively concluded that during the IP, the average prices of imports from the PRC undercut the average Community industry prices by 5,7 %. The revision of the undercutting margin leaves unaffected the conclusions on the effect of the dumped imports set out in recitals 67 to 69 of the provisional Regulation.

2. **Exchange rate fluctuations**

(34) One user has claimed that developments on the market after the IP show that the situation prevailing during the IP was exceptional and the prices started to increase again after the IP. This user claimed that the temporary drop in prices during the IP was largely due to the unfavourable exchange rate from the USD to EUR, the fact that prices for Coke 80+ are generally expressed in USD on world markets and the difficulty to adjust prices, which are generally negotiated annually, to the new currency situation. In this regard, it is noted that the investigation has shown that the sales prices of the Community industry producers within the EU are generally expressed not in USD, but in EUR or other European currencies. Furthermore, the post-IP development of higher prices claimed by this user, which would coincide with an even weaker USD as compared to the EUR, does not support the logic of the argument that falling Coke 80+ prices were caused by a negative USD-EUR exchange rate trend.

3. **Self-inflicted injury**

(35) One user has submitted that the alleged injury of the Community industry caused by decreasing prices was mainly attributable to the aggressive pricing policy operated by some European producers selling at prices below the Chinese import prices. However, the investigation has not shown evidence of a general 'aggressive pricing policy' between certain European producers. It was found that competition between the European producers mainly takes place in the regional markets and not on a Community-wide level, since due to considerable transport costs the producers usually sell in their geographic proximity. Lower prices possibly charged by some producers have thus not caused injury to other European producers. Moreover, the fact that there is competition between certain European producers does not mean that the Chinese dumped import prices have not forced those producers to outbid each other even more than they would do in a situation of fair competition by the Chinese producers, and thus to sell at unsustainable prices.

(36) This user has also argued that the biggest share of increase in consumption from 2003 to the IP was taken by the Community producers and not by the Chinese imports. While this might be true in absolute terms, it is not so in relative terms: the investigation has shown that the Chinese imports, which had a 24 % market share in 2003, took almost half of the increase in the consumption from 2003 to the IP.

(37) The same user also asserted that in an environment of growing consumption, the Community industry was unable to increase its market share because it did not increase its production capacity. Therefore, the increase in Community consumption had to be met by Chinese imports. However, the fact that the Community industry did not increase its capacity in pace with the growing consumption can be seen rather as a consequence of the uncertain investment environment created by the price pressure from the dumped Chinese imports than a cause for injury for the Community industry.

(38) It is noted that the Community industry had about 120 000 tonnes spare capacity during the IP, the utilisation of which was not economically viable due to the price pressure from the dumped Chinese imports. Furthermore, one Community producer cut down its production significantly from 2005 to the IP and has post-IP ceased the production of Coke 80+. The specific nature of this industry means that temporary shutting down of the production process destroys the production equipment (ovens) and restarting would require large additional investments. In a market situation characterised by a significant price depression it did not make economic sense to invest in restarting closed-down ovens or building new ones.

(39) One interested party also claimed that increased labour costs were a major cause of the alleged injury to the Community industry. However, the investigation has shown that the overall increase in number of Community industry employees is attributable only to one producer, which in parallel increased its productivity. The other Community industry producers kept their level of employment fairly stable although facing decreasing production. This can be explained by the nature of the production process of this industry, where the personnel needed to keep the production facility running remains practically unchanged, regardless of whether the company is operating on full capacity or less, causing productivity to decrease in line with the production.

(40) In any case, even if some Community industry producers have incurred unnecessarily high labour costs when decreasing production, this cannot be a significant cause of injury, given the minimal effect the changes in labour costs have had on the overall profitability of the Community industry. By way of illustration, the increase in labour costs (EUR 1,8 million) explains less than one percentage point loss of the Community industry's overall profitability, which plummeted from 16,2 % to – 3,8 % from 2005 to the IP (around EUR 39 million reduction in profits).

4. **Prices of raw materials; natural disadvantages in terms of access to raw materials**

(41) With regard to prices of raw material as further described in recital 75 of the provisional Regulation, it is noted that revised calculations have shown that during the period considered, the basic raw material used in the production of Coke 80+, coking coal, represented around 60 % of the Community industry's cost of manufacturing of Coke 80+.

(42) One interested party argued that the increased costs of the main raw material, coking coal, hit the Community industry relatively harder than the Chinese industry due to the latter's easy access to the raw material, thus making the Community industry uncompetitive even in the absence of dumped imports. In this regard, it is firstly noted that in view of the very limited cooperation from Chinese exporting producers, no general conclusions can be drawn as to the facility of access to raw materials by Chinese exporting producers. It must also be noted that one Community industry producer, which accounts for a significant portion of the total Community industry production, uses locally sourced coking coal. In addition, as was already noted in recital 76 of the provisional Regulation, up to the IP the Community industry was able to pass on the increase in raw material prices to the sales prices. Additionally, it is noted that according to available market information, also China is partly resorting to imported raw materials, currently importing significant quantities of coking coal from Australia.

(43) Another interested party implied that the causation analysis is incorrect, since it doubts how the Community industry, which was profitable in 2003, could have suffered losses during the IP and no longer be able to cover the high cost of raw materials, even though the increase of Community industry's sales prices between 2003 and the IP was far more significant than the impact of the increase in raw material prices.

(44) In this regard it is noted that while it is true that the sales prices of the Community industry were higher during the IP than in 2003 (see recital 51 of the provisional Regulation), the raw material prices, which are the main component of the cost of production, were proportionally even higher (see recital 75 of the provisional Regulation as well as recital 41 above). The claim is therefore rejected.

5. **Conclusion on causation**

(45) In the absence of any further new and substantiated information or argument, recitals 67 to 80 of the provisional Regulation are hereby confirmed, with the exception of the revisions made to recitals 67 and 75 as stated above.

(46) In the light of the above, the provisional finding of existence of causal link between the material injury suffered by the Community industry and the dumped Chinese imports is confirmed.

G. **COMMUNITY INTEREST**

1. **Developments after the investigation period**

(47) Comments relating to the need to take into consideration certain important post-IP developments have been received both from certain Community industry producers as well as from the cooperating exporting producer and users. These comments relate in particular to significant increases of the market price of Coke 80+, as regards the price of Chinese imports as well as the Community industry's sales prices.

(48) The said interested parties have attributed the increase of import prices mainly to certain measures put recently in place by the Chinese Government to discourage the export of energy-intensive materials, including coke, such as an export tax hike and restrictive distribution of export licenses. One user has argued that those measures are likely to be long-lasting in view of the structural changes in Chinese policy, whereby semi-raw energy goods such as Coke 80+ are retained for domestic market to generate locally sourced added value. Community industry producers have, on the other hand, asserted that the current high price level is temporary and subject to changes at any time at the sole discretion of the PRC Government. The same

user has also claimed that the profitability of the Community producers is currently at high levels due to significantly increased sales prices after the investigation period. According to this user, the sales prices of the Community industry are set for a long-term upward trend due to significant increase in consumption in the stone wool industry, absence of any increases in production capacity in the EU and, especially, dramatic changes in Chinese policy having significantly reduced exports from the PRC.

(49) Insofar as this user implied that the alleged longevity of (i) the restricted Chinese exports and (ii) the allegedly high level of profitability of the Community industry negates the justification of imposing anti-dumping measures, it is noted firstly that while it is true that the Chinese Government has put in place measures that discourage the export of energy-intensive materials, no information is available to draw conclusions on the permanence of these measures. On the contrary, experience gathered in the past, notably in 2004 and 2005, showed that the policy to influence exports could be reversed rather quickly. Secondly, in accordance with Article 6(1) of the basic Regulation, information concerning dumping and injury relating to a period subsequent to the investigation period shall, normally, not be taken into account.

(50) Significant increases observed in the prices of Chinese imports of Coke 80+ have, however, been acknowledged in recital 112 of the provisional Regulation and have been taken into account in the choice of minimum import price (MIP) as the form of the measure. The continuing trend of high import prices beyond injurious levels also after the provisional Regulation is confirmed by published market reports as well by information available to the Commission concerning imports of Coke 80+ from the PRC carried out after the imposition of the provisional measures. This circumstance is again reflected in the choice of the proposed definitive measure, a minimum import price, as set out in recital 75.

(51) Certain Community industry producers have claimed that the high import price levels observed after the IP were attributable also to the ocean freight rates for bulk carriage, which increased significantly after the IP, inflating the cif price of the product concerned. They argued that since the minimum import price is determined on a cif basis, it does not address the issue of imports at dumped prices, as the import prices meet the MIP when they include the ocean freight. In this regard, it is noted firstly that in accordance with Article 6(1) of the basic Regulation, post-IP information concerning dumping shall, normally, not be taken into account. In addition, the said Community industry producers have even failed to elaborate how the alleged ocean freight rate increases should, in their view, be taken into account in this regard.

(52) The said Community industry producers have also argued that a MIP based on the cost of raw material during the IP fails to adequately remove the injury caused by the dumped imports, since a significant increase in ocean freight rates after the IP would affect the cost of the principal raw material, the coking coal, which is mainly sourced overseas by the Community industry. In this regard, it is again reiterated that in accordance with Article 6(1) of the basic Regulation, post-IP information shall, normally, not be taken into account. In addition, the Community industry producers have not quantified the effect the alleged increase of ocean freight rates would have on the Community industry's cost of production of Coke 80+, except for providing some published market reports on ocean freight rates. These do not, however, allow making sufficiently detailed calculations on the impact for the Community industry as a whole, taking into account in particular that the Community industry producers acquire their raw material from several different sources and since one of the major Community industry producers would not be affected by the ocean freight increases, since it uses locally sourced raw material. The argument of the Community industry producers must thus be rejected.

2. **Interest of the Community industry**

(53) In addition to the comments related to post-IP developments addressed in recitals 47 to 50, one user also claimed that the analysis of the interest of the Community industry for the imposition of measures rests exclusively on the findings relating to the IP, without reflecting the entire injury investigation period. In this regard, it is noted that the analysis of possible consequences for the Community industry of imposing anti-dumping measures or not imposing them is deduced from the injury analysis, which the Commission has, as elaborated in recitals 28 and 29, conducted regarding the development of injury indicators over the whole period considered. This claim is therefore rejected.

(54) In the absence of any new and substantiated information or argument in this respect, the conclusion made in recitals 82 to 84 of the provisional Regulation regarding the interest of the Community industry are hereby confirmed.

3. **Interest of unrelated importers/traders in the Community**

(55) In the absence of any comments from importers/traders, the conclusions made in recitals 85 to 87 of the provisional Regulation are hereby confirmed.

4. **Interest of users**

(a) *Stone-wool producers*

(56) In the absence of any new and substantiated information or argument in this particular respect, recitals 89 to 91 of the provisional Regulation are hereby confirmed. Consequently, it is also confirmed that a duty at the level of the underselling margin would have a very limited effect on the cost of production of the cooperating stone wool producer, with a hypothetical maximum increase of around 1 %, as stated in recital 98 of the provisional Regulation.

(b) *Foundries*

(57) After the provisional stage, the Commission intensified the investigation as regards the possible impact of measures on users, in particular foundries. To this end, additional information was requested from CAEF and national foundry associations. The information received confirms the provisional finding, based on users' questionnaire responses as mentioned in recitals 93 and 94 of the provisional Regulation, that the effect of Coke 80+ in the total cost of production of foundries is relatively moderate. While the share of Coke 80+ in the users' cost of production depends on the product, it was found to range generally between 2 % and 5 %.

(58) As for the profitability of the foundries mentioned in recital 93 of the provisional Regulation, it was found to range between 2 % and 6 %. This is in line with the information provided by CAEF, based on a study of the profitability of 93 foundries in 2006, according to which the average profitability of the foundry industry was 4,4 % (the average margin being 2,8 % for foundries producing for the automotive sector and 6,4 % for those producing for mechanical engineering sector).

(59) The additional information mentioned above has also confirmed the provisional findings that a duty at the level of the underselling margin would have a very limited effect on the foundries' cost of production, with a hypothetical maximum increase of around 1 %. It is noted that for a large part of the foundries included in the analysis mentioned in recital 93 of the provisional Regulation, this percentage is even well below 1 %.

(60) Some interested parties have, however, argued that given the low average profit margin of European foundries, they cannot sustain considerable price increases of Coke 80+, which they can hardly pass on to their customers. In this regard it is noted that it cannot be excluded that some foundries might not be able to sustain the current price levels of Coke 80+. However, the price increases after the IP appear not to be attributable to the anti-dumping measures, since the MIP imposed by the provisional Regulation is well below the current market price level and since the price increases started already before the provisional measures were imposed.

(c) *Security of supply*

(61) Some users have also reiterated their earlier claims relating to the security of supply of Coke 80+ and argued that measures would dramatically affect the EC user industry, for which Coke 80+ is a raw material of strategic importance. They have, however, at the same time asserted that imposition of anti-dumping measures will only marginally, if at all, affect Chinese exports. Moreover, the form and the level of the anti-dumping measures adopted in this case is designed to function as a safetynet for the Community industry but without artificially distorting the market to the detriment of the user industry. The investigation has shown that any risk of scarcity of supply, if at all, may stem from possible increased domestic demand in China and the current Chinese policy to discourage energy intensive exports but not from the anti-dumping measure.

5. **Conclusion on Community interest**

(62) The above additional analysis concerning the interest of the users in the Community has not altered the provisional conclusions in this respect. Even if in certain cases the burden would need to be fully borne by the user/importer, any negative financial impact on the latter would in any event be negligible. On this basis, it is considered that the conclusions regarding the Community interest as set out in the provisional Regulation are not altered. In the absence of any other comments, they are therefore definitively confirmed.

H. **DEFINITIVE MEASURES**

1. **Injury elimination level**

(63) The pre-tax profit margin used in the provisional Regulation to calculate the injury elimination level was based on the average profit margin attained by the Community industry during 2003-2005, provisionally calculated as being 15,3 % of turnover. This was considered as the profit margin before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports.

(64) Several interested parties contested the profit margin level provisionally used. One user claimed that the 15,3 % profit ratio is excessive, arguing that the profit levels achieved by the Community industry in 2004 and 2005 were exceptional, occurring at a time when the shortages of Chinese Coke 80+ were so significant that the then existing anti-dumping measures were suspended. This user argued that there was no valid justification for using a profit margin significantly higher that the one found used in the previous investigation. It is noted that the profit margin used at the definitive stage of the previous investigation was 10,5 %.

(65) The cooperating Chinese exporting producer echoed the argument that the provisionally used profit margin is distorted by the high profits in 2004 and 2005 achieved due to exceptional market conditions. This exporting producer claimed that Coke 80+ is a commodity type product and that a profit rate of 5 % would be more in line with profit rates previously used for commodity type products.

(66) Some Community industry producers have, on the other hand, claimed that a 15,3 % profit margin is not adequate for injury elimination, since the said producers have historically achieved higher profit levels in the absence of price depression caused by dumped imports. They have claimed that the 15,3 % profit margin would not be sufficient to allow the Community producers to make investments required to meet compulsory environmental standards and to rejuvenate or reactivate closed-down production facilities. It was claimed that such revamping of the Community production would allow the Community producers to meet the increased demand for Coke 80+. The Community producers in question have, however, not presented an exact figure of the profit margin level that they would consider reasonable.

(67) It is firstly noted that, in the light of the revised profitability findings mentioned in recital 25, it was found that the weighted average profitability reached over 2003-05 was actually 13,1 %, instead of the 15,3 % mentioned in recital 107 of the provisional Regulation.

(68) Secondly, the methodology used to determine the injury elimination level was re-examined following comments received. It was considered that the years used as benchmark could indeed be considered unrepresentative in normal circumstances to the extent that 2004 was an exceptionally good year in terms of profits (15 %) because of a significant shortage of Chinese Coke 80+ on the market. This exceptional situation was reflected again in 2005 (16,2 %). On the other hand, in 2003 the Community industry was likely still in the process of recovering from past dumping, reflected in a somewhat lower profit margin (8,1 %). Instead, the target profit of 10,5 % used in the previous investigation was based on three consecutive years (1995 to 1997) at a time before increased market penetration of Chinese imports. Therefore, it seems to reflect more appropriately the profitability that this type of industry can achieve in the absence of dumped imports.

(69) As for the claims of certain Community producers for a profit margin necessary to enable investments, it is noted that such criterion is irrelevant when determining the injury elimination level. Indeed, the profit margin used when calculating the target price that will remove the injury in question must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, i.e. in the absence of the dumped imports.

(70) On the basis of the above, it is concluded that the Community industry could reasonably expect to achieve a pre-tax profit margin of 10,5 % in the absence of dumped imports and this profit margin was used in the definitive findings.

(71) The Chinese import prices as adjusted for the calculation of price undercutting (see recitals 20 and 21) were compared, for the IP, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the profit margin, as now revised (see recital 70). The difference resulting from this comparison, when expressed as a percentage of the total cif import value, amounted to 25,8 %, i.e. less than the dumping margin found.

(72) Given that no exporting producer had requested individual treatment, a single countrywide injury elimination level was calculated for all exporters in the PRC.

2. **Definitive measures**

(73) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the injury found.

(74) On the basis of the above, the definitive duty should amount to 25,8 %.

3. **Form of the measures**

(75) The provisional Regulation imposed an anti-dumping duty in the form of a minimum import price. Given that the considerations for choosing a MIP as the form of the measure mentioned in recital 112 of the provisional Regulation are still valid, and in the absence of any comments against this choice, the MIP as the form of the measure is hereby confirmed.

(76) As set out in recital 117 of the provisional Regulation, the Commission analysed further the feasibility of an indexation system to be applied to the MIP. For this purpose, the Commission looked into different indexation options, in particular the evolution of the price of coking coal, the main raw material of Coke 80+. Also certain Community industry producers had claimed that the MIP should be linked to the cost of coking coal. However, it was found that the fluctuation of the price of Coke 80+ is not sufficiently explained by the evolution of the price of coking coal or any other major input. Therefore, it was decided that the MIP should not be indexed.

(77) The amount of the minimum import price results from the application of the injury margin to the export prices used in the calculation of the injury elimination level during the IP. The definitive minimum import price thus calculated amounts to EUR 197 per tonne.

4. **Implementation**

(78) In the absence of any comments concerning the implementation of measures, recitals 114 to 116 of the provisional Regulation are hereby confirmed.

(79) There was concern as to the applicability of these measures in respect of the method of measuring of the Coke as to determine the proportions of Coke 80+ and Coke 80– present in a mixed shipment. The investigation has shown that importers of Coke 80+ impose strict criteria for, *inter alia*, size and moisture and that upon arrival of the purchased product in the Community, control measurements are made by the importer to ensure that these criteria are respected. The main users of Coke in the EC are certified under ISO 9001:2000 or equivalent quality management systems requiring certificates of origin and certificate of conformity with each shipment. Such certificates of conformity confirming also dimensional specifications may be requested by the implementing customs authorities for the purpose of verifying the accuracy of the particulars contained in the declaration.

(80) The two ISO standards applied by the industry are ISO 728:1995 and ISO 18238:2006 determining respectively the method of measuring and the method of sampling of Coke to be measured. The fact that these standards are already applied by the importing industry shows that such standards are applicable and therefore relevant for the implementation of these measures.

I. **DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY**

(81) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of definitive duties imposed. As the definitive duty is lower than the provisional duty, amounts provisionally secured in excess of the definitive rate of anti-dumping duty should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of coke of coal in pieces larger than 80 mm in maximum diameter (Coke 80+) falling within CN code ex 2704 00 19 (TARIC code 2704 00 19 10) and originating in the People's Republic of China. The diameter of the pieces shall be determined in accordance with the norm ISO 728:1995.

2. The amount of the definitive anti-dumping duty applicable for products described in paragraph 1 shall be the difference between the minimum import price of EUR 197 per tonne and the net, free-at-Community-frontier price, before duty, in all cases where the latter is less than the minimum import price.

3. The anti-dumping duty shall also apply, *pro rata*, to coke of coal in pieces with a diameter of more than 80 mm when shipped in mixtures containing both coke of coal in pieces with a diameter of more than 80 mm and coke of coal in pieces with smaller diameters unless it is determined that the quantity of coke of coal in pieces with a diameter of more than 80 mm does not constitute more than 20 % of dry net weight of the mixed shipment. The quantity of coke of coal in pieces with a diameter of more than 80 mm contained in mixtures may be determined in accordance with Articles 68 to 70 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1] wherein, *inter alia*, it is stated that the customs authorities may require the declarant to

[1] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration and to examine the goods and take samples for analysis or for detailed examination. In cases where the quantity of coke of coal in pieces with a diameter of more than 80 mm is determined on the basis of samples, the samples shall be selected in accordance with the norm ISO 18238:2006.

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 establishing the Community Customs Code [1], the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Community-frontier price, before customs clearance.

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

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 1071/2007 on imports of coke of coal in pieces larger than 80 mm in maximum diameter (Coke 80+) originating in the People's Republic of China shall be definitively collected at the rate of the definitive duty imposed pursuant to Article 1. The amounts secured in excess of the amount of the definitive duty shall be released.

Article 3

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

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

Done at Brussels, 17 March 2008.

For the Council
The President
I. JARC

[1] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).

COUNCIL REGULATION (EC) No 240/2008

of 17 March 2008

repealing the anti-dumping duty on imports of urea originating in Belarus, Croatia, Libya and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 2002, by Regulation (EC) No 92/2002 [2], the Council imposed definitive anti-dumping duties ranging from EUR 7,81 to EUR 16,84 per tonne on imports of urea, whether or not in aqueous solution, originating in Belarus, Croatia, Libya and Ukraine. By the same Regulation, definitive anti-dumping duties ranging from EUR 6,18 to EUR 21,43 per tonne were imposed on imports of urea originating in Estonia, Lithuania, Bulgaria and Romania and were automatically repealed on 1 May 2004 and 1 January 2007 respectively, the date of accession of these countries to the Community.

2. Request for review

(2) In April 2006, the Commission published a notice of impending expiry of the existing measures [3]. On 17 October 2006 the Commission received a request for an expiry review of these measures pursuant to Article 11(2) of the basic Regulation.

(3) This request was lodged by the European Fertiliser Manufactures Association (EFMA) (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of urea.

(4) The applicant alleged, and provided sufficient prima facie evidence for its allegation, that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry with regard to imports of urea originating in Belarus, Croatia, Libya and Ukraine (the countries concerned).

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission initiated this review by publishing a notice of initiation in the *Official Journal of the European Union* [4].

3. Investigations concerning other countries

(6) In May 2006, the Commission initiated a review [5] of the definitive anti-dumping duties imposed by Council Regulation (EC) No 901/2001 [6] on imports of urea originating in Russia pursuant to Article 11(2) and (3) of the basic Regulation. As a result of this review, the Council, by Regulation (EC) No 907/2007 [7] repealed the anti-dumping duties on imports of urea originating in Russia. It was concluded that there was no continuation of material injury to the Community industry and that there was no likelihood of recurrence of injury thereto in the absence of measures.

4. Current investigation

4.1. *Investigation period*

(7) The investigation of continuation or recurrence of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (RIP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2002 up to the end of the RIP (period considered).

4.2. *Parties concerned by the investigation*

(8) The Commission officially advised the applicant, the Community producers, the exporting producers in Belarus, Croatia, Libya and Ukraine (hereinafter the exporters concerned), the importers, traders, users and their associations known to be concerned, as well as the representatives of the government of the exporting countries, of the initiation of the review.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 17, 19.1.2002, p. 1. Regulation as last amended by Regulation (EC) No 73/2006 (OJ L 12, 18.1.2006, p. 1).
[3] OJ C 93, 21.4.2006, p. 6.
[4] OJ C 316, 22.12.2006, p. 13.
[5] OJ C 105, 4.5.2006, p. 12.
[6] OJ L 127, 9.5.2001, p. 11.
[7] OJ L 198, 31.7.2007, p. 4.

(9) The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notice of initiation.

(10) The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

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

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

(13) With regard to importers into the Community, very low cooperation was obtained as only one importer expressed its willingness to cooperate. It was therefore decided that sampling was not necessary with regard to importers.

(14) Twelve Community producers properly completed the sampling form and formally agreed to cooperate further in the investigation. Four out of these 12 companies, which were found to be representative of the Community industry in terms of volume of production and sales of urea in the Community, were selected for the sample. The four sampled Community producers accounted for around 60 % of the total production of the Community industry during the RIP, whilst the above 12 Community producers represented around 80 % of the production in the Community. This sample constituted the largest representative volume of production and sales of urea in the Community which could reasonably be investigated within the time available.

(15) Four exporting producers in Ukraine properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. These four exporting producers accounted for almost 100 % of the total exports from Ukraine to the Community during the RIP. Due to the low number of cooperating companies in Ukraine, it was decided not to apply sampling, and all companies were invited to submit a questionnaire.

(16) Replies to the questionnaires were received from four Community producers, one importer, two users, and four exporting producers in Ukraine and one each in Belarus, Croatia and Libya. In addition, several importers and users and their associations submitted comments without replying to the questionnaire.

(17) The Commission sought and verified all information deemed necessary for the purpose of a determination of the likely continuation of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) Sampled Community producers:

— Fertiberia SA, Madrid, Spain,

— SKW Stickstoffwerke Piesteritz GmbH, Lutherstadt Wittenberg, Germany,

— Yara Group (Yara Spa Ferrara, Italy and Yara Sluiskil BV, Sluiskil, the Netherlands),

— Zakłady Azotowe Puławy SA, Puławy, Poland;

(b) Exporting producers:

— Ukraine:

— Joint Stock Company Concern Stirol, Gorlovka,

— Close Joint Stock Company Severodonetsk, Severodonetsk,

— Joint Stock Company Dnipro Azot, Dneprodzerzhinsk,

— Open Joint Stock Company Cherkassy Azot, Cherkassy;

— Croatia:

— Petrokemija DD, Kutina;

(c) Community importers:

— Dynea Austria GmbH, Krems, Austria;

(d) Community users:

— Associazione Liberi Agricoltori Cremonesi, Cremona, Italy,

— Acefer, Asociación Comercial Española de Fertilizantes, Madrid, Spain.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(18) The product concerned is the same as determined in the original investigation, namely, urea currently classifiable within CN codes 3102 10 10 and 3102 10 90 (the product concerned) and originating in Belarus, Croatia, Libya and Ukraine.

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

2. **Like product**

(20) As established in the original investigation, this review investigation has confirmed that the products manufactured and exported by the exporting producers in Belarus, Croatia, Libya and Ukraine, those manufactured and sold on the domestic market of these countries, as well as those manufactured and sold by the Community producers on the Community market all have the same basic physical, chemical and technical characteristics and essentially the same uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

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

(21) Given the conclusions reached regarding likelihood of continuation or recurrence of injury, only the core arguments regarding likelihood of continuation or recurrence of dumping are developed below.

1. **Dumping of imports during the review investigation period**

1.1. *General principles*

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

(23) In case of the three export countries with market-economy status, namely Croatia, Libya and Ukraine, normal value was determined in accordance with Article 2(1) to (3) of the basic Regulation. In case of Belarus, normal value was established according to Article 2(7) of the basic Regulation.

1.2. *Croatia*

(24) The dumping margin for the sole exporting producer in Croatia was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(5), (11) and (12) of the basic Regulation.

(25) Croatia exported more than 200 000 tonnes of urea to the Community during the RIP, capturing 2,3 % of the Community market. The sole known and cooperating exporting producer was still found to export at significantly dumped prices to the Community, as far as the RIP is concerned. The dumping margin found exceeded 20 %.

(26) There were significant doubts as to whether the costs for gas, which is the major input to produce urea, were reasonably reflected in the records of the exporting producer. Indeed, it was found that gas was sourced under particular conditions, determined by the fact that both the exporting producer and the gas supplier are majority-owned by the Croatian state and that gas prices were abnormally low. In the absence of any undistorted gas prices relating to the Croatian domestic market, and in accordance with Article 2(5) of the basic Regulation, gas prices would have to be established on 'any other reasonable basis, including information from other representative markets'. As the majority of the gas used for manufacturing the product concerned is of Russian origin, the adjusted price could be based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs, Waidhaus being the main hub for Russian gas sales to the EU. This would increase the dumping margin significantly. Given the fact that dumping exists without this adjustment, and the conclusions on likelihood of recurrence of injury set out below, this matter was not pursued.

1.3. *Belarus, Libya and Ukraine*

(27) As explained in recitals 29, 38 and 45, the quantities exported from the three other exporting countries concerned reached such low levels that it was considered that the export prices associated therewith would not be sufficiently reliable, in isolation, to establish a finding regarding continuation of dumping.

2. **Likelihood of recurrence of dumping**

2.1. *Belarus*

(28) Since Belarus is not considered a market-economy country, the normal value was determined on the basis of data obtained from a producer in a market-economy third country. In the notice of initiation, the USA was envisaged as an appropriate analogue country, as it was already used in the original investigation. No interested party submitted comments in this respect. The US producer that already cooperated in the original investigation filed a questionnaire response which was used for the determination of normal value.

(29) The sole known Belorussian producer filed a questionnaire reply. Overall, Belarus exported about 25 000 tonnes of urea, which amounts to a Community market share of 0,3 %. Given such low market share, the analysis in regard of Belarus concentrates on the likelihood of recurrence of dumping.

(30) The export behaviour of Belarus to all third countries was analysed. Exports to all regions of the world were made at prices which were consistently lower than the normal value found in the analogue market, showing that prices to other export markets were dumped.

(31) In addition, it was examined whether Belarus export prices, if they were made at levels equal to the current price levels prevailing in the Community, would be dumped. Indeed, for a commodity product such as urea, it would be unlikely to sell at levels above current market prices. The result of this analysis also led to significant dumping margins.

(32) At the same time, export prices charged for exports to other export markets were found to be slightly higher than prices charged for export to the Community. Therefore, it is questionable that the Community would be a more attractive market in terms of prices than other third country markets.

(33) In the light of the above facts and considerations, there are indications that dumping is likely to recur in the absence of measures.

2.2. *Croatia*

(34) As indicated in recital 25, exports to the Community were found to be dumped. The export behaviour of Croatia to all third countries was also analysed. Exports to all regions of the world were made at prices which were lower than the normal value showing that dumping was taking place even in the absence of the adjustment mentioned above.

(35) In addition, it was examined whether Croatian export prices would be dumped if they were made at levels which would be equal to the current price levels prevailing in the Community. Indeed, for a commodity product such as urea, it would be unlikely to sell at levels above current market prices. The result of this analysis also led to significant dumping margins.

(36) At the same time, export prices charged for exports to other export markets were found to be slightly higher than prices charged for exports to the Community. Therefore, it is questionable that the Community would be a more attractive market in terms of prices than other third country markets.

(37) There are therefore indications that dumping is likely to recur in the absence of measures.

2.3. *Libya*

(38) The sole known exporting producer filed a questionnaire response that was incomplete. Since it failed to submit some of the missing information, recourse to Article 18 of the basic Regulation had to be made, where appropriate. Available information showed that overall, Libya exported about 70 000 tonnes of urea to the Community during the RIP, which amounts to a Community market share of 0,8 %. Given this low market share, the analysis with regard to Libya concentrates on the likelihood of recurrence of dumping. The analysis on dumping and likelihood of recurrence of dumping was carried out on the basis of the information available.

(39) In the absence of representative domestic sales on the Libyan market, normal value was established on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, in accordance with Article 2(3) of the basic Regulation. A margin of profit of 8 % was found to be reasonable in this case.

(40) Analysis of the questionnaire submitted by the cooperating company in Libya showed that its core activity was to export to other third markets. In the RIP, around 570 000 tonnes were exported to third markets, namely, more than eight times the total exports made to the Community market. Comparison of exports prices charged for these exports with the normal value established as described above showed a significant level of dumping.

(41) There were significant doubts as to whether the costs for gas, which is the major input to produce urea, were reasonably reflected in the records of the exporting producer. On the basis of the information available, it is held that gas was sourced under particular conditions, determined by the fact that both the exporting producer and the gas supplier are majority-owned by the Libyan state and that gas prices were abnormally low. An adjustment would increase the dumping margin significantly. Given the fact that dumping exists without this adjustment, and the conclusions on likelihood of recurrence of injury set out below, it was not found necessary to apply such adjustment although it was warranted.

(42) In addition, it was examined whether Libyan export prices would be dumped if they were made at levels which would be equal to the current price levels prevailing in the Community. Indeed, for a commodity product such as urea, it would be unlikely to sell at levels above current market prices. The result of this analysis also led to significant dumping margins.

(43) At the same time, export prices charged for exports to other export markets were found to be slightly higher than prices for exports to the Community. Therefore, it is questionable that the Community would be a more attractive market in terms of prices than other third country markets.

(44) In light of the above, there are indications that dumping is likely to recur in the absence of measures.

2.4. *Ukraine*

(45) Four producers cooperated with the investigation. Only two of them made export sales to the Community during the RIP. Overall, Ukraine exported only about 20 000 tonnes of urea, which amounts to a Community market share of 0,2 %. Given this low market share, the analysis with regard to Ukraine concentrates on the likelihood of recurrence of dumping.

(46) As regards gas costs, it was found that Ukraine is importing the majority of the gas consumed in the production of urea from Russia. In this regard, all available data indicates that Ukraine imports natural gas from Russia at prices which are significantly below the market prices paid in unregulated markets for natural gas. The investigation revealed that the price of natural gas from Russia when exported to the Community was approximately twice as high as the domestic gas price in the Ukraine. Therefore, as provided for in Article 2(5) of the basic Regulation, the gas costs borne by the applicant were adjusted on the basis of information from other representative markets. The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs. Waidhaus, being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be considered a representative market within the meaning of Article 2(5) of the basic Regulation.

(47) The adjustment led to domestic prices being below cost for three of the companies involved and thus the cost of production, together with a reasonable profit margin of 8 %, was used as normal value. For the fourth company, duly adjusted domestic prices were used for this purpose.

(48) The export behaviour of Ukrainian exporting producers to all third countries was then analysed. Exports to all regions of the world were made at prices which were consistently and significantly below the normal value thus established.

(49) In addition, it was examined whether Ukrainian export prices would be dumped if they were made at levels which would be equal to the current price levels prevailing in the Community. Indeed, for a commodity product such as urea, it would be unlikely to sell at levels above current market prices. The result of this analysis also led to significant dumping margins. At the same time, export prices charged for exports to other export markets were found to be at a comparable level as prices for exports to the Community. Therefore, it is questionable that the Community would be a more attractive market in terms of prices than other third country markets. In view of the above facts and considerations, there are indications that dumping is likely to recur in the absence of measures.

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

3.1. *Belarus*

(50) According to the information on file, Belarus had, at most, a spare capacity of about 150 000 tonnes during the RIP. In addition, exports to other third countries accounted for about 225 000 tonnes.

(51) It is not excluded that part of the spare capacity will be directed to the Community once measures are repealed. The sole Belarusian exporter has well developed distribution channels in the Community, and, in general, the size of the Community market is attractive, particularly for countries with geographical proximity.

(52) However, it is not excluded that some of these quantities will be exported also to other third countries, as the likely price levels in those territories yield ex-work prices which are similar (or even higher) than those which could be obtained when exporting to the Community. In addition, it is not excluded that urea consumption will increase in other regions of the world, given current trends for larger agricultural production. On balance, it is not expected that exports would reach the full amount of spare capacity, if measures expire, but they would be likely to exceed *de minimis* levels.

(53) As to a potential redirection of exports from third countries to the Community, similar arguments apply, making it unlikely that significant additional quantities would be exported to the Community market in the foreseeable future, should measures expire.

3.2. *Croatia*

(54) According to the information on file, Croatia had, at most, a spare capacity of about 120 000 tonnes during the RIP. In addition, exports to other third countries accounted for about 60 000 tonnes. It is not excluded that part of the spare capacity is directed to the Community once measures are repealed. The sole Croatian exporter has well developed distribution channels in the Community, and, in general, the size of the Community market is attractive, particularly for countries with geographical proximity.

(55) However, anti-dumping measures have not prevented Croatia from exporting significant quantities to the Community. There are no indications that they would have been any impediment for exporting further quantities to the Community. Given that this has not been the case, it is not likely that significant additional exports to the Community would be made via the activation of such capacities. In addition, it is not excluded that some of these quantities could be exported also to other third countries, as the likely price levels in those territories yield ex-work prices which are similar to (or slightly higher than) those which could be obtained when exporting to the Community.

(56) In addition, it is not excluded that urea consumption will increase in other regions of the world, given current trends for larger agricultural production. On balance, it is not expected that a significant proportion of the spare Croatian capacity would be used for additional exports to the Community, but given the current export levels, export volumes to the Community are expected to remain above *de minimis* levels.

(57) As to a potential redirection of exports from third countries to the Community, similar arguments apply, making it unlikely that significant additional quantities would be exported to the Community market in the foreseeable future, should measures expire.

3.3. *Libya*

(58) According to the information available, Libya had, at most, a spare capacity of around 140 000 tonnes during the RIP. In addition, exports to other third countries accounted for around 570 000 tonnes. It is not excluded that part of the spare capacity is directed to the Community once measures are repealed. The sole Libyan exporter has well developed distribution channels in the Community, and, in general, the size of the Community market is attractive, particularly for countries with geographical proximity.

(59) However, it is not excluded that some of these quantities are exported also to other third countries, as the likely price levels in those territories yield ex-work prices which are similar to (or even higher than), those which could be obtained when exporting to the Community. In addition, it is not excluded that urea consumption will increase in other regions of the world, given current trends for larger agricultural production. On balance, it is not expected that exports would reach the full amount of spare capacity, if measures expire, but they would be likely to exceed *de minimis* levels.

(60) As to a potential redirection of exports from third countries to the Community, similar arguments apply, making it unlikely that significant additional quantities would be exported to the Community market in the foreseeable future, should measures expire.

3.4. *Ukraine*

(61) According to the information on file, Ukraine had, at most, a spare capacity of around 375 000 tonnes during the RIP. In addition, exports to other third countries accounted for around 3 500 000 tonnes. It is not excluded that part of the spare capacity will be directed to the Community once measures are repealed. The Ukrainian exporters have well developed distribution channels in the Community, and, in general, the size of the Community market is attractive, particularly for countries with geographical proximity. However, it is not excluded that some of these quantities are exported also to other third countries, as likely price levels in those territories yield ex-work prices which are similar to those which could be obtained when exporting to the Community. In addition, it is not excluded that urea consumption will increase in other regions of the world, given current trends for larger agricultural production. On balance, it is not expected that exports would reach the full amount of spare capacity, if measures expire, but they would be likely to exceed *de minimis* levels.

(62) As to a potential redirection of exports from third countries to the Community, the applicants have argued that the forecasted increased capacity in other regions (particularly the Middle East) would replace Ukrainian exports mainly in Asia, but also in Africa and Latin America, to the tune of over 3 000 000 tonnes, which would then be redirected to the Community. However, on the basis of the information on the file, it is not possible to conclude that such displacement would take place, inter alia, because increasing global consumption could well absorb these additional quantities, were they to enter the market. In addition, it is not excluded that capacity increases would take place over a longer time period than suggested by the applicant. All things considered, it is not possible to confirm that significant additional quantities would be likely to be redirected to the Community market in the foreseeable future, should measures expire.

4. **Conclusion on the likelihood of continuation or of recurrence of dumping**

(63) On the basis of the aforementioned analysis, it is concluded that dumping of significant quantities of urea would be unlikely to continue in the case of Croatia, nor to recur in the case of the other three countries concerned, should measures be repealed.

D. **DEFINITION OF COMMUNITY INDUSTRY**

1. **Definition of Community production**

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

(65) Out of the 16 Community producers, 12 agreed to cooperate with the investigation, while three sent the information requested for the purpose of sampling but did not offer further cooperation. No Community producer opposed the request for review.

(66) Accordingly, the following 12 producers agreed to cooperate:

— Achema AB (Lithuania),

— Adubos de Portugal (Portugal),

— AMI Agrolinz Melamine International GmbH (Austria),

— Duslo AS (Slovak Republic),

— Fertiberia SA (Spain),

— AS Nitrofert (Estonia),

— Nitrogénmüvek Zrt (Hungary),

— SKW Stickstoffwerke Piesteritz (Germany),

— Yara Group (consolidation of Yara France SA (France), Yara Italia Spa (Italy), Yara Brunsbuttel GmbH (Germany) and Yara Sluiskil BV (the Netherlands),

— Zakłady Azotowe Puławy (Poland),

— ZAK SA (Poland),

— BASF AG (Germany).

(67) As these 12 Community producers accounted for around 80 % of the total Community production during the RIP, it is considered that they account for a major proportion of the total Community production of the like product. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Community industry'. The four non-cooperating Community producers will be referred to as 'other Community producers'.

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

E. **SITUATION IN THE COMMUNITY MARKET**

1. **Consumption in the Community market**

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

(70) Between 2002 and the 2003, Community consumption increased by 3 % and remained stable until the RIP.

	2002	2003	2004	2005	RIP
Total EC consumption in tonnes	8 650 000	8 945 000	8 955 000	8 875 000	8 950 000
Index (2002 = 100)	100	103	104	103	103

2. **Imports from the countries concerned**

2.1. *Volume, market share and prices of imports*

(71) With respect to Belarus, Croatia, Libya and Ukraine, the import volumes, market shares and average prices developed as set out below. The data are based on Eurostat statistics.

	2002	2003	2004	2005	RIP
Belarus – Volume of imports (tonnes)	134 931	167 981	62 546	62 044	25 193
Market share	1,6 %	1,9 %	0,7 %	0,7 %	0,3 %
Prices of imports (EUR/tonne)	107,5	126,6	148,5	165,7	190,5
Index (2002 = 100)	100	118	138	154	177
Ukraine – Volume of imports (tonnes)	44 945	36 304	77 270	84 338	52 553
Market share	0,5 %	0,4 %	0,8 %	0,9 %	0,5 %
Prices of imports (EUR/tonne)	117,4	134,5	139,6	192,7	194,0
Index (2002 = 100)	100	115	119	164	165
Croatia – Volume of imports (tonnes)	126 400	179 325	205 921	187 765	208 050
Market share	1,5 %	2,0 %	2,3 %	2,1 %	2,3 %
Prices of imports (EUR/tonne)	125,1	135,0	145,0	171,7	185,0
Index (2002 = 100)	100	108	116	137	148
Libya – Volume of imports (tonnes)	142 644	227 793	153 390	124 515	73 361
Market share	1,6 %	2,5 %	1,7 %	1,4 %	0,8 %
Prices of imports (EUR/tonne)	114,1	134,9	147,2	193,8	201,6
Index (2002 = 100)	100	118	129	170	177

(72) With respect to Belarus, the volume of imports increased slightly between 2002 and 2003, then constantly decreased throughout the period considered (– 81 % for the whole period). Similarly, its market share slightly increased between 2002 and 2003 then dropped continuously, falling at 0,3 % in the RIP. The volumes were *de minimis* from 2004 onwards. The prices evolved positively from EUR 107 to EUR 190 per tonne during the period considered.

(73) Concerning Ukraine, import levels remained consistently below the *de minimis* threshold, whereas import prices increased by 65 % between 2002 and the RIP.

(74) Croatian imports were rather stable throughout the period, at around 2 % share of the Community market, whereas import prices increased by 48 %.

(75) Imports from Libya increased in 2003 but then dropped constantly until the end of the RIP. During the whole period they decreased by 49 % and their market share passed from 1,6 % in 2002 to 0,8 % in the RIP. As with the other countries concerned, Libyan import prices increased, by 77 % between 2002 and the RIP.

(76) The price evolution of the four countries is proportionally higher than, or comparable to, the sales price increase by the Community industry.

(77) For the purpose of calculating the level of price undercutting during the RIP for Croatia, Community industry's ex-works prices to unrelated customers have been compared with the cif Community frontier import prices of the sole cooperating exporting producer of Croatia, duly adjusted in order to reflect a landed price. The comparison showed that imports were undercutting the prices of the Community industry by 4,7 %. However, these prices were similar to the non-injurious price established for the Community industry.

(78) In view of the fact that market shares of three of the four countries concerned were below *de minimis*, whether individually or collectively, it was considered that their exports to the Community did not cause injury and that therefore undercutting margins were not relevant as a part of the analysis of continuation of injury.

3. **Imports from other countries**

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

	2002	2003	2004	2005	RIP
Volume of imports from Russia (tonnes)	1 360 025	1 429 543	1 783 742	1 404 863	1 488 367
Market share	15,7 %	16,0 %	19,9 %	15,8 %	16,6 %
Prices of imports from Russia (EUR/tonne)	119	133	154	180	196
Volume of imports from Egypt (tonnes)	579 830	629 801	422 892	385 855	624 718
Market share	6,7 %	7,0 %	4,7 %	4,3 %	7,0 %
Prices of imports from Egypt (EUR/tonne)	149	163	178	220	222
Volume of imports from Romania (tonnes)	260 298	398 606	235 417	309 195	248 377
Market share	3,0 %	4,5 %	2,6 %	3,5 %	2,8 %
Prices of imports from Romania (EUR/tonne)	123	142	175	197	210

	2002	2003	2004	2005	RIP
Volume of imports from all other countries (tonnes)	373 732	291 620	254 311	336 110	326 579
Market share	4,3 %	3,3 %	2,8 %	3,8 %	3,6 %
Prices of imports from all other countries (EUR/tonne)	141	170	194	221	224
Market share all third countries	29,7 %	30,8 %	30,0 %	27,4 %	30,0 %

(80) It should be noted that the overall imports from third countries increased by 4,4 % during the whole period. This result is mainly due to the increase of imports from Russia (+ 9,4 %), which is the main exporter by far. It should also be noted that imports from Russia were subject to measures in the form of a MIP during the whole period, measures repealed by Regulation (EC) No 907/2007 (see recital 6). Between 2002 and the RIP, imports from Egypt increased by 7,7 % while imports from other third countries decreased in the same range, Romania accounting for more than 40 % of these imports. As for the export prices, all the above countries have exported to the Community at prices which do not undercut the Community industry's prices in the RIP and/or are above the non-injurious price of the Community industry.

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

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

4.1. *Preliminary remarks*

(82) Most of the cooperating Community industry producers were found to use the like product for further processing to blended or synthetic fertiliser products which are further downstream nitrogenous fertilisers containing in addition to the nitrogen, other substances such as water-soluble phosphorus, or/and water-soluble potassium.

(83) Such internal transfers of urea production were found not to enter the open market and not to be in competition with imports of the product concerned. The investigation showed that this captive use represents a stable share of around 20 % of the total Community industrys production. It is therefore considered that it cannot affect significantly the injury picture of the Community industry.

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

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

(a) Production

(85) The Community industry's production, including volumes intended for captive use, remained practically stable between 2002 and the RIP, increasing by 5 % in 2003 and decreasing by the same percentage in 2004. In 2005 and during the RIP a small increase of respectively 2 % and 1 percentage point was registered, reaching a level of 4,45 million tonnes.

	2002	2003	2004	2005	RIP
C.I. Production (tonnes)	4 300 000	4 500 000	4 300 000	4 400 000	4 450 000
Index (2002 = 100)	100	105	100	102	103
C.I. production used for captive transfers	800 000	800 000	800 000	900 000	900 000
As % of total production	19,3 %	18,5 %	19,5 %	20,6 %	20,2 %

Source: Complainants, sampling questionnaire replies and verified questionnaire replies

(b) Capacity and capacity utilisation rates

(86) Production capacity increased slightly (5 %) between 2002 and the RIP. In view of the stable production volume, the resulting capacity utilisation decreased slightly, from a level of 84 % in 2002 to a level of 81 % in the RIP. However, capacity utilisation for this type of production and industry can be affected by the production of other products which can be produced on the same production equipment and is therefore less meaningful as an injury indicator.

	2002	2003	2004	2005	RIP
C.I. Production capacity (tonnes)	5 100 000	5 200 000	5 200 000	5 400 000	5 360 000
Index (2002 = 100)	100	101	101	106	105
C.I. Capacity utilisation	84 %	88 %	84 %	81 %	81 %
Index (2002 = 100)	100	104	100	96	96

(c) Stocks

(87) The level of closing stocks of the Community industry was rather stable between 2002 and 2004 and increased sharply (by 24 percentage points in 2005 and by further 13 percentage points at the end of the RIP). Nevertheless, as urea intended for captive use is stored with the product sold on the free market, the level of the stocks is considered a less meaningful injury indicator. It should also be noted that the end of the RIP coincides with the starting of seasonal sales.

	2002	2003	2004	2005	RIP
C.I. Closing stocks (tonnes)	250 000	240 000	260 000	320 000	350 000
Index (2002 = 100)	100	94	103	127	140

(d) Sales volume

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

	2002	2003	2004	2005	RIP
C.I. EC sales volume (tonnes)	3 150 000	3 240 000	3 050 000	3 000 000	3 070 000
Index (2002 = 100)	100	103	97	95	97

(e) Market share

(89) The market share held by the Community industry also decreased moderately between 2002 and the RIP, passing from 36,5 % to 34,3 %.

	2002	2003	2004	2005	RIP
Market share of Community industry	36,5 %	36,3 %	34,1 %	33,8 %	34,3 %
Index (2002 = 100)	100	99	93	93	94

(f) Growth

(90) The Community industry lost a small part of its market share in a stable market over the period considered. The market share lost by the Community industry was not taken over by the imports of the four countries concerned, which registered a decrease from 5,8 % to 4,4 % of their market share between 2002 and the RIP.

(g) Employment

(91) The level of employment of the Community industry decreased by 6 % between 2002 and the RIP, while production slightly increased, reflecting thus the concern of the Community industry continuously to increase its productivity and competitiveness.

	2002	2003	2004	2005	RIP
C.I. Employment product concerned	1 235	1 230	1 155	1 160	1 165
Index (2002 = 100)	100	100	94	94	94

(h) Productivity

(92) The output per person employed by the Community industry per year increased by 6 % between 2002 and 2003 and remained constant until the RIP, thus showing the combined positive impact of reduced employment and increase in production of the Community industry.

	2002	2003	2004	2005	RIP
C.I. Productivity (tonnes per employee)	3 500	3 700	3 745	3 765	3 735
Index (2002 = 100)	100	106	107	108	107

(i) Magnitude of dumping margin

(93) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping in the RIP, given the fact that (i) the volume of imports from Belarus, Ukraine and Libya, was below *de minimis* levels; (ii) imports from Croatia were stable, at prices increased in line with EU sales prices; and (iii) the overall financial situation of the Community industry was very positive, this impact is considered not to be significant and the indicator not meaningful.

(j) Recovery from the effects of past dumping

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

4.3. *Data relating to the sampled Community producers*

(a) Sales prices and factors affecting domestic prices

(95) The sampled Community industry producers average net sales price increased substantially as from 2004 to the RIP, reflecting the consistent and continuous increase of the cost of the raw material and the prevailing favourable international market conditions of urea during the same period.

	2002	2003	2004	2005	RIP
S.P. Unit price EC market (EUR/tonne)	138	149	164	189	207
Index (2002 = 100)	100	108	120	138	151

(b) Wages

(96) Between 2002 and the RIP, the average wage per employee increased by 13 %, as the table below shows. In the light of the inflation rate and the overall reduced employment, this increase in wages is considered to be moderate.

	2002	2003	2004	2005	RIP
S.P. Annual labour cost per employee (000 EUR)	44,2	47,2	47,1	48,6	49,9
Index (2002 = 100)	100	107	107	110	113

(c) Investments

(97) Annual investments in the like product made by the four sampled producers developed positively during the period considered, that is to say, it increased by 74 %, although it showed some fluctuations. These investments related mainly to modernisation of machinery and to environmental requirements. This confirms the efforts of the Community industry to continuously improve its productivity and competitiveness. The results are apparent in the evolution of productivity which increased substantially (see recital 92) during the same period.

	2002	2003	2004	2005	RIP
S.P. Net investments (000 EUR)	20 493	11 095	31 559	40 001	35 565
Index (2002 = 100)	100	54	154	195	174

(d) Profitability and return on investments

(98) Profitability of the sampled producers shows a comfortable improvement between 2002 and 2005, when it reaches over 19 % of the sales value. A steady increase of the gas price at the beginning of 2006 brings back the result at 10,7 % during the RIP. In this respect, it is noted that in the original investigation, a profit margin of 8 % that may be reached in the absence of injurious dumping had been established. The return on investments (ROI), expressed as the profit in per cent of the net book value of investments, broadly followed the profitability trend over the whole period considered.

	2002	2003	2004	2005	RIP
S.P. Profitability of EC sales to unrelated customers (% of net sales)	4,6 %	11,1 %	18,4 %	19,3 %	10,7 %
Index (2002 = 100)	100	241	400	419	233

	2002	2003	2004	2005	RIP
S.P. ROI (profit in % of net book value of investment)	10,7 %	31,0 %	48,8 %	51,1 %	29,4 %
Index (2002 = 100)	100	290	456	477	275

(e) Cash flow and ability to raise capital

(99) Cash flow has increased considerably between 2002 and 2005 and decreased steadily during the RIP. This development is in line with the development of the overall profitability during the period considered.

	2002	2003	2004	2005	RIP
S.P. Cash flow (000 EUR)	38 534	60 289	92 671	111 722	58 912
Index (2002 = 100)	100	156	240	290	153

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

5. **Conclusion**

(101) Between 2002 and the RIP, the market share of the Community industry decreased slightly, together with sales volume on the Community market. However, the overall situation of the Community industry has improved during the period considered.

(102) Almost all other injury indicators, with the exception of the increase of stock volumes, developed positively: production volume and unit sales prices of the Community industry increased and profitability was, after 2002, significantly above the level of profit set as a target profit in the original investigation.

(103) Return on investment and cash flow evolved positively as well. Wages developed moderately and the Community industry continued to invest. Productivity increased also substantially reflecting the positive evolution of production and the efforts of the Community industry to improve it through investments.

(104) The applicant claimed that the long-term profitability requirements, measured as a return on sales, for the urea industry should be at the level of 25 % after tax. This would mean around 36 % pre-tax profit on turnover. The applicant claimed that this was justified by the cost of establishing a new ammonia/urea plant, which would require a return on investment of 11 % (allegedly equivalent to the 36 % pre-tax profit on turnover). To this purpose, it is noted that the applicant never claimed such a high target profit in this proceeding and in the original investigation a profit margin of 8 % that may be reached in the absence of injurious dumping was established. Moreover, the Court of First Instance, in its judgment in Case T-210/95, confirmed that '… the profit margin to be used by the Council when calculating the target price that will remove the injury in question must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports' ([1]). In the same case, it was confirmed that '… (an) argument that the profit margin which is to be used by the Community institutions must be the margin necessary to ensure the survival of the Community industry and/or an adequate return on capital, has no basis whatever in the basic regulation.'

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

([1]) Case T-210/95 EFMA v Council (1195) ECR II-3291, point 60.

(106) Given the particular characteristics of the fertiliser industry (inter alia, its capital-intensiveness) and the nature of the fertiliser market (the volatility of its raw materials prices and of final product prices), it is agreed that return on sales, on its own, may not necessarily be the most telling indicator regarding profitability, and that it should be complemented with indicators such as return on capital employed and return on investment. However, the applicant has not submitted any evidence that, in the absence of the dumped imports, the Community industry would have been able to obtain returns at the level requested. Neither did the applicant show what profit margin would have been achieved by the Community industry but for the dumped imports. This claim was therefore rejected.

(107) It is therefore concluded that there was no continuation of material injury to the Community industry.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. General

(108) Since there is no continuation of material injury caused by imports from the country concerned, the analysis focused on the likelihood of recurrence of injury should the measures be removed. In this respect, two main parameters were analysed: (i) possible export volumes and prices of the countries concerned and (ii) the effect of those projected volumes and prices from the countries concerned on the Community industry.

(109) The analysis is set against a general market context of continuing high prices and profits not only in the Community but across the world. To a large extent, this is due to demand outstripping supply. There are no indications that such general context will vary significantly in the short to medium term.

2. Possible export volumes and prices of the countries concerned

(110) As already stated, Ukrainian exporting producers are likely, at most, to export around 375 000 additional tonnes of urea to the Community, should measures expire. The figures for Libya and Belarus indicate at most 140 000 and 150 000 tonnes, respectively. Similarly, the figures for Croatia would not be likely to increase significantly from their current level.

(111) Export prices to the Community and to third countries have been analysed above. Together with the market conditions described below and the likely development of key cost drivers such as gas, this analysis points to the likelihood that export prices would remain high. As a result, it cannot be concluded that the prices would be likely materially to undercut and/or undersell the Community industry's prices or costs.

3. Impact on the Community industry of the projected export volumes and price effects in the event of repeal of measures

(112) The urea market is forecast to grow significantly in the coming years both in the Community [1] and worldwide, mainly due to increased agricultural production (for biofuel applications) and also due to expanding industrial use for AdBlue [2]. As an example, prospects for agricultural markets in the European Union 2007-14 released by the Directorate-General for Agriculture in July 2007 confirm that cereals production will likely increase by up to 20 % in this period. The applicant-own evaluation suggests a 10 % growth. Moreover, at the end of September 2007, Council Regulation (EC) No 1107/2007 [3] established derogations from set-aside lands for the year 2008. The anticipated Community market growth (around one million additional tonnes) is likely to exceed the *maximum* likely volumes that the exporting countries could export to the Community. Therefore, no major volume imbalances would be likely to emanate from these additional exports, not least because the gap between maximum potential Community production and consumption is quantified at roughly two million tonnes, and there is no indication that this gap would be filled by other exports (inter alia, originating in Russia, as described in Regulation (EC) No 907/2007) to an extent that oversupply would suppress or depress market prices.

(113) In view of the foregoing, it is not likely that the Community industry would have to decrease its sales, production or prices to an extent such that its profitability and overall position would be materially affected. Therefore, it is likely that profits would maintain their current level, reflecting the favourable market conditions prevailing in particular from 2004 to the RIP.

4. Conclusion on likelihood of recurrence of injury

(114) Given the foregoing, it cannot be concluded that there is a likelihood of recurrence of injury to the Community industry were the existing measures to be repealed.

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[1] Source: 'Global fertilisers and raw materials supply and supply/demand balances: 2005-2009', A05/71b, June 2005, International Fertiliser Industry Association 'IFA'.

[2] AdBlue is a registered trade mark for an Aqueous Urea Solution (32,5 %) and is used in a process called Selective Catalytic Reduction to reduce emissions of oxides of nitrogen from the exhaust of diesel vehicles.

[3] OJ L 253, 28.9.2007, p. 1.

G. **ANTI-DUMPING MEASURES**

(115) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be repealed. They were also granted a period to make representations subsequent to this disclosure. No comments were received that were apt to alter the conclusions set out above.

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

(117) In consideration of the circumstances described above, namely the significant distortions in the cost structure and/or the export operations by exporters in all four countries concerned, it is found necessary to monitor closely the evolution of the imports of urea originating in Belarus, Croatia, Libya and Ukraine, with a view to facilitating swift appropriate action should the situation so require,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping duty on imports of urea, whether or not in aqueous solution, falling within CN codes 3102 10 10 and 3102 10 90 and originating in Belarus, Croatia, Libya and Ukraine is hereby repealed and the proceeding concerning these imports is terminated.

Article 2

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

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

Done at Brussels, 17 March 2008.

For the Council
The President
I. JARC

COUNCIL REGULATION (EC) No 241/2008

of 17 March 2008

on the conclusion of the Fisheries Partnership Agreement between the European Community and the Republic of Guinea-Bissau

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament [1],

Whereas:

(1) The Community has negotiated with the Republic of Guinea-Bissau a new Fisheries Partnership Agreement providing Community vessels with fishing opportunities in the waters over which Guinea-Bissau has sovereignty or jurisdiction in respect of fisheries.

(2) As a result of those negotiations, a Fisheries Partnership Agreement was initialled on 23 May 2007.

(3) It is in the Community's interest to approve that Agreement.

(4) The method for allocating the fishing opportunities among the Member States should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

The Fisheries Partnership Agreement between the European Community and the Republic of Guinea-Bissau [2] is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

Article 2

1. The fishing opportunities set out in the Protocol to the Agreement shall be allocated among the Member States as follows:

(a) shrimp fishing:

Spain	1 421 GRT
Italy	1 776 GRT
Greece	137 GRT
Portugal	1 066 GRT

(b) fin-fish/cephalopods:

Spain	3 143 GRT
Italy	786 GRT
Greece	471 GRT

(c) tuna seiners and surface longliners:

Spain	10 vessels
France	9 vessels
Portugal	4 vessels

(d) pole-and-line vessels:

Spain	10 vessels
France	4 vessels

2. If licence applications from the Member States referred to in paragraph 1 do not cover all the fishing opportunities fixed by the Protocol to the Agreement, the Commission may take into consideration licence applications from any other Member State.

Article 3

The Member States whose vessels fish under the Agreement referred to in Article 1 shall notify the Commission of the quantities of each stock caught within the Guinea-Bissau fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas [3].

[1] Opinion of 11 March 2008 (not yet published in the Official Journal).

[2] OJ L 342, 27.12.2007, p. 5.

[3] OJ L 73, 15.3.2001, p. 8.

Article 4

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in order to bind the Community.

Article 5

This Regulation shall enter into force on the day 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, 17 March 2008.

For the Council
The President
I. JARC

COUNCIL REGULATION (EC) No 242/2008

of 17 March 2008

on the conclusion of the Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament [1],

Whereas:

(1) The Community has negotiated with Côte d'Ivoire a Fisheries Partnership Agreement providing Community vessels with fishing opportunities in the waters over which Côte d'Ivoire has sovereignty or jurisdiction in respect of fisheries.

(2) As a result of those negotiations, a new Fisheries Partnership Agreement was initialled on 5 April 2007.

(3) It is in the Community's interest to approve that Agreement.

(4) The method for allocating the fishing opportunities among the Member States should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

The Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire [2] is hereby approved on behalf of the Community.

Article 2

The fishing opportunities set out in the Protocol to the Agreement shall be allocated among the Member States as follows:

— 25 purse seiners:

France:	10 vessels
Spain:	15 vessels

— 15 surface longliners:

Spain:	10 vessels
Portugal:	5 vessels.

If licence applications from these Member States do not cover all the fishing opportunities laid down by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

The Member States whose vessels fish under the Agreement referred to in Article 1 shall notify the Commission of the quantities of each stock caught within Côte d'Ivoire's fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas [3].

Article 4

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Community.

Article 5

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

[1] Opinion of 11 March 2008 (not yet published in the Official Journal).

[2] OJ L 48, 22.2.2008, p. 41.

[3] OJ L 73, 15.3.2001, p. 8.

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

Done at Brussels, 17 March 2008.

For the Council
The President
I. JARC

COUNCIL REGULATION (EC) No 243/2008

of 17 March 2008

imposing certain restrictive measures on the illegal authorities of the island of Anjouan in the Union of the Comoros

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2008/187/CFSP of 3 March 2008 concerning restrictive measures against the illegal authorities of the island of Anjouan in the Union of the Comoros [1],

Having regard to the proposal from the Commission,

Whereas:

(1) On 25 October 2007, by letter addressed to the Secretary General/High Representative, the President of the African Union Commission asked for the support of the European Union and its Member States in the enforcement of the sanctions that the Peace and Security Council of the African Union had decided to impose on the illegal authorities of Anjouan and certain associated persons.

(2) Common Position 2008/187/CFSP provides for restrictive measures to be imposed on the illegal authorities of Anjouan and certain associated persons. Those measures include freezing funds and economic resources belonging to the persons concerned.

(3) The said measures fall within the scope of the Treaty establishing the European Community. Accordingly, with a view to ensuring their uniform application by economic operators in all Member States, a Community act is necessary to implement them as far as the Community is concerned,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall apply:

(a) 'funds' means financial assets and economic benefits of every kind, including but not limited to:

(i) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

(iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

(iv) interest, dividends or other income on or value accruing from or generated by assets;

(v) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(vi) letters of credit, bills of lading, bills of sale;

(vii) documents evidencing an interest in funds or financial resources;

(b) 'freezing of funds' means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;

(c) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

(d) 'freezing of economic resources' means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

[1] OJ L 59, 4.3.2008, p. 32.

(e) 'territory of the Community' means the territories to which the Treaty is applicable, under the conditions laid down in the Treaty.

Article 2

1. All funds and economic resources belonging to, owned, held or controlled by the natural and legal persons, entities and bodies listed in Annex I shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

4. The prohibition set out in paragraph 2 shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and could not reasonably have known, that their actions would infringe this prohibition.

Article 3

1. Article 2(2) shall not apply to the addition to frozen accounts of:

(a) interest or other remuneration on those accounts;

(b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the provisions of this Regulation,

provided that any such interest, remuneration or payments continue to be subject to Article 2(1).

2. Article 2(2) shall not prevent financial or credit institutions in the Community from crediting frozen accounts where they receive funds transferred by third parties to the account of a natural or legal person, entity or body listed in Annex I, provided that any additions to such accounts are also frozen. The financial or credit institution shall inform the competent authorities of such transactions without delay.

Article 4

1. The competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, under such conditions as they deem appropriate, provided that the funds or economic resources concerned are:

(a) necessary to satisfy the basic needs of persons listed in Annex I and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

(c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;

(d) necessary for extraordinary expenses, provided that the Member State concerned has notified the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted at least two weeks before the authorisation.

2. Member States shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 5

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as a result of negligence.

Article 6

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

(a) supply immediately the competent authorities indicated in the websites listed in Annex II of the Member States where they are resident or located with any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2, and shall forward such information, directly or through the Member States, to the Commission;

(b) cooperate with the competent authorities indicated in the websites listed in Annex II in any verification of this information.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 7

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violations and enforcement problems and judgments handed down by national courts.

Article 8

1. The Commission shall be empowered to:

(a) amend Annex I on the basis of decisions taken in respect of the Annex to Common Position 2008/187/CFSP;

(b) amend Annex II on the basis of information supplied by Member States.

2. A notice shall be published regarding the procedures for submitting information in relation to Annex I [1].

Article 9

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.

2. Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 10

1. Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites listed in Annex II.

2. Member States shall notify the Commission of their competent authorities once this Regulation enters into force and shall notify it of any subsequent changes.

Article 11

This Regulation shall apply:

(a) within the territory of the Community, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Community who is a national of a Member State;

(d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the territory of the Community.

Article 12

This Regulation shall enter into force on the day 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, 17 March 2008.

For the Council
The President
I. JARC

[1] OJ C 71, 18.3.2008, p. 25.

ANNEX I

List of members of the illegal government of Anjouan, and of natural and legal persons, entities and bodies associated with such members, referred to in Articles 2, 3 and 4

Organisation	Mohamed Bacar
Sex	M
Function	Self-proclaimed president, colonel
Place of birth	Barakani
Date of birth	5.5.1962
Passport No:	01AB01951/06/160, date of issue: 1.12.2006
Organisation	Jaffar Salim
Sex	M
Function	'Interior Minister'
Place of birth	Mutsamudu
Date of birth	26.6.1962
Passport No:	06BB50485/20 950, date of issue: 1.2.2007
Organisation	Mohamed Abdou Madi
Sex	M
Function	'Cooperation Minister'
Place of birth	Mjamaoué
Date of birth	1956
Passport No:	05BB39478, date of issue: 1.8.2006
Organisation	Ali Mchindra
Sex	M
Function	'Education Minister'
Place of birth	Cuvette
Date of birth	20.11.1958
Passport No:	03819, date of issue: 3.7.2004
Organisation	Houmadi Souf
Sex	M
Function	'Civil Service Minister'
Place of birth	Sima
Date of birth	1963
Passport No:	51427, date of issue: 4.3.2007
Organisation	Rehema Boinali
Sex	M
Function	'Energy Minister'
Place of birth	
Date of birth	1967
Passport No:	540355, date of issue: 7.4.2007
Organisation	Dhoihirou Halidi
Sex	M
Title	Kabinettschef
Function	Senior official, closely associated with the illegal government of Anjouan
Place of birth	Bambao Msanga
Date of birth	8.3.1965
Passport No:	64528, date of issue: 19.9.2007

Organisation	Abdou Bacar
Sex	M
Function	Oberstleutnant
Title	Senior military officer, instrumental in supporting the illegal government of Anjouan
Place of birth	Barakani
Date of birth	2.5.1954
Passport No:	54621, date of issue: 23.4.2007

ANNEX II

Websites for information on the competent authorities referred to in Articles 4, 6 and 10 and address for notifications to the European Commission

BELGIUM
http://www.diplomatie.be/eusanctions

BULGARIA
http://www.mfa.government.bg

CZECH REPUBLIC
http://www.mfcr.cz/mezinarodnisankce

DENMARK
http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/Sanktioner/

GERMANY
http://www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Aussenwirtschaftsrecht/embargos.html

ESTONIA
http://www.vm.ee/est/kat_622/

GREECE
http://www.ypex.gov.gr/www.mfa.gr/en-US/Policy/Multilateral+Diplomacy/International+Sanctions/

SPAIN
www.mae.es/es/MenuPpal/Asuntos/Sanciones+Internacionales

FRANCE
http://www.diplomatie.gouv.fr/autorites-sanctions/

IRELAND
http://www.dfa.ie/un_eu_restrictive_measures_ireland/competent_authorities

ITALY
http://www.esteri.it/UE/deroghe.html

CYPRUS
http://www.mfa.gov.cy/sanctions

LATVIA
http://www.mfa.gov.lv/en/security/4539

LITHUANIA
http://www.urm.lt

LUXEMBOURG
http://www.mae.lu/sanctions

HUNGARY
http://www.kulugyminiszterium.hu/kum/hu/bal/Kulpolitibank/nemzetkozi_szankciok/

MALTA
http://www.doi.gov.mt/EN/bodies/boards/sanctions_monitoring.asp

NETHERLANDS

http://www.minbuza.nl/sancties

AUSTRIA

http://www.bmeia.gv.at/view.php3?f_id=12750&LNG=en&version=

POLAND

http://www.msz.gov.pl

PORTUGAL

http://www.min-nestrangeiros.pt

ROMANIA

http://www.mae.ro/index.php?unde=doc&id=32311&idlnk=1&cat=3

SLOVENIA

http://www.mzz.gov.si/si/zunanja_politika/mednarodna_varnost/omejevalni_ukrepi/

SLOVAKIA

http://www.foreign.gov.sk

FINLAND

http://formin.finland.fi/kvyhteistyo/pakotteet

SWEDEN

http://www.ud.se/sanktioner

UNITED KINGDOM

www.fco.gov.uk/competentauthorities

Address for notifications to the European Commission:

Commission of the European Communities
Directorate-General for External Relations
Directorate A. Crisis Platform and Policy Coordination in CFSP
Unit A.2. Crisis Management and Peace Building
CHAR 12/108
B-1049 Brussels
Telephone: (32-2) 296 61 33/295 55 85
Fax: (32-2) 299 08 73

COMMISSION REGULATION (EC) No 244/2008

of 17 March 2008

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [1], and in particular Article 138(1) thereof,

Whereas:

(1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 March 2008.

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

Done at Brussels, 17 March 2008.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 17 March 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	JO	60,6
	MA	62,6
	TN	120,5
	TR	95,3
	ZZ	84,8
0707 00 05	JO	178,8
	MA	90,4
	TR	145,1
	ZZ	138,1
0709 90 70	MA	96,9
	TR	106,4
	ZZ	101,7
0709 90 80	EG	238,6
	ZZ	238,6
0805 10 20	EG	44,7
	IL	59,3
	MA	47,5
	TN	52,8
	TR	50,7
	ZA	43,3
	ZZ	49,7
0805 50 10	EG	107,9
	IL	106,8
	SY	109,7
	TR	127,9
	ZA	147,5
	ZZ	120,0
0808 10 80	AR	93,7
	BR	86,8
	CA	98,7
	CL	102,2
	CN	85,4
	MK	43,9
	US	106,7
	UY	87,6
	ZA	69,5
	ZZ	86,1
0808 20 50	AR	81,0
	CL	86,3
	CN	80,8
	ZA	89,0
	ZZ	84,3

(1) Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 245/2008

of 17 March 2008

derogating from Regulation (EC) No 1249/96 on rules of application (cereal sector import duties) for Council Regulation (EEC) No 1766/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 10(4) thereof,

Whereas:

(1) Article 5(1), first subparagraph, point (b) of Commission Regulation (EC) No 1249/96 of 28 June 1996 on rules of application (cereal sector import duties) for Council Regulation (EEC) No 1766/92 [2], lays down the principle of a specific security for imports of high-quality common wheat, in addition to that required under Commission Regulation (EC) No 1342/2003 of 28 July 2003 laying down special detailed rules for the application of the system of import and export licences for cereals and rice [3]. This additional security of EUR 95 per tonne is justified by the different customs duties on imports in force for different categories of common wheat depending on whether the wheat is of high quality or low and medium quality.

(2) Council Regulation (EC) No 1/2008 [4] temporarily suspended customs duties on imports of certain cereals for the 2007/08 marketing year, which ends on 30 June 2008, while allowing them to be reintroduced before that date should the market situation so warrant.

(3) The temporary suspension of customs duties in respect of imports carried out on the basis of import licences issued from 4 January 2008, in accordance with Article 2 of Regulation (EC) No 1/2008, has meant the temporary removal of the specific circumstances justifying the establishment of a system of specific securities additional to those inherent in import licences. In view of those new conditions applicable to imports of common wheat since the entry into force of Regulation (EC) No 1/2008, the additional security of EUR 95 per tonne as provided for in Article 5(1), first subparagraph, point (b) of Regulation (EC) No 1249/96 can no longer be justified until such time as customs duties on imports are reinstated.

(4) Since the publication of Regulation (EC) No 1/2008, this additional security has however been lodged by some operators. In order to limit the financial constraints that such operators face as a result, provision should be made for the said security to be released immediately.

(5) A derogation should therefore be granted from Regulation (EC) No 1249/96.

(6) In order to avoid the continued lodging of the additional security by operators and in view of the need to release as soon as possible the securities lodged since 4 January 2008, this Regulation should enter into force immediately.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. By way of derogation from Article 5(1), first subparagraph, point (b) of Regulation (EC) No 1249/96, the additional security referred to in the said provision shall not be required during the suspension of customs duties on imports of certain cereals as established by Regulation (EC) No 1/2008.

2. The additional securities referred to in paragraph 1, which have been lodged since 4 January 2008 shall be released immediately.

[1] OJ L 270, 21.10.2003, p. 78. Regulation as last amended by Regulation (EC) No 735/2007 (OJ L 169, 29.6.2007, p. 6).
[2] OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1816/2005 (OJ L 292, 8.11.2005, p. 5).
[3] OJ L 189, 29.7.2003, p. 12. Regulation as last amended by Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1).
[4] OJ L 1, 4.1.2008, p. 1.

Article 2

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

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

Done at Brussels, 17 March 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION REGULATION (EC) No 246/2008

of 17 March 2008

amending Regulation (EC) No 1043/2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [1], and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

(1) The first paragraph of Article 14 of Commission Regulation (EC) No 1043/2005 [2] makes a detailed reference to the frequency of fixing the refund rates for basic products of Regulations mentioned in Article 1(1) exported in the form of non-Annex I goods.

(2) The refunds may, in accordance with the Regulations mentioned in Article 1(1) of Regulation (EC) No 1043/2005, be granted when the internal and external market conditions justify so. Where the market situation does not justify the granting of refunds the periodical fixing may be suspended.

(3) The second subparagraph of Article 8(3) of Regulation (EC) No 3448/93 makes reference to the same procedure for the granting of refunds on the agricultural products concerned when they are exported in unprocessed state.

(4) For reasons of simplification and harmonisation it is appropriate to adapt Article 14 of Regulation (EC) No 1043/2005.

(5) Regulation (EC) No 1043/2005 should therefore be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I,

HAS ADOPTED THIS REGULATION:

Article 1

Article 14 of Regulation (EC) No 1043/2005 is replaced by the following:

'*Article 14*

The fixing of the rate of refund, as provided for in Article 13(3) of Regulation (EC) No 1784/2003 and the corresponding provisions of the other Regulations referred to in Article 1(1) of this Regulation, shall be effected each month per 100 kg of basic products.

By way of derogation from the first paragraph:

(a) for basic products listed in Annex I to this Regulation, the refund may be fixed according to another timetable determined in accordance with the procedure referred to in Article 16(2) of Regulation (EC) No 3448/93;

(b) the rate of the refund on poultry eggs in shell, fresh or preserved, and eggs not in shell and egg yolks, suitable for human consumption, fresh, dried or otherwise preserved, not sweetened, shall be fixed for the same period as that for the refunds on those products exported unprocessed.'

Article 2

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

[1] OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).

[2] OJ L 172, 5.7.2005, p. 24. Regulation as last amended by Regulation (EC) No 1496/2007 (OJ L 333, 19.12.2007, p. 3).

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

Done at Brussels, 17 March 2008.

For the Commission
Günter VERHEUGEN
Vice-President

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 17 March 2008

terminating the anti-dumping proceeding concerning imports of polyvinyl alcohol originating in the People's Republic of China and Taiwan and releasing the amounts secured by way of the provisional duties imposed

(2008/227/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) On 19 December 2006, the Commission published a notice [2] initiating an anti-dumping proceeding on imports into the Community of polyvinyl alcohol (PVA) originating in the People's Republic of China (PRC) and Taiwan. On 17 September 2007, the Commission, by Regulation (EC) No 1069/2007 [3] (the provisional Regulation) imposed a provisional anti-dumping duty on PVA originating in the PRC. With regard to Taiwan, no provisional measures were imposed.

(2) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2003 to the end of the IP (period considered).

B. SUBSEQUENT PROCEDURE

(3) Following the decision to impose provisional anti-dumping duties on imports of PVA originating in the PRC and not to impose such measures on imports from Taiwan, several interested parties submitted comments in writing. The parties who so requested were also granted the opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(4) The Commission intensified the investigation with regard to Community interest aspects and exceptionally allowed users pertaining to the paper industry, an important users sector which had not cooperated so far, to file a users' questionnaire reply.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the proceeding concerning imports of PVA originating in the PRC and Taiwan and to release the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ C 311, 19.12.2006, p. 47.
[3] OJ L 243, 18.9.2007, p. 23.

C. **PRODUCT CONCERNED AND LIKE PRODUCT**

(7) The same Community user as referred to under recital 16 of the provisional Regulation reiterated and elaborated further its arguments for the exclusion from the product scope of a certain grade (the contested grade) which it called 'low ash NMWD PVA' and which it purchased, *inter alia*, from the PRC. This user alleged (i) that the Commission had not given sufficient reasons for considering that the contested grade shared its basic physical and technical characteristics with the other grades falling within the product definition and it further insisted (ii) that this grade had very specific end-uses. Moreover, it submitted (iii) that the contested grade, according to this user, was a co-polymer and hence would not fall under the product scope.

(8) Before going into the detail of this users claims, it is first to be noted that the ash content in PVA is an impurity; the lower the ash level, the purer the PVA is. Secondly, the notion of 'low ash PVA' is subjective. There is no generally agreed standard for it, which means that each producer has its own ceiling for establishing whether a PVA is low ash or not. It was found that in practice, this amounts to significant differences: amongst the producers subject to the investigation the ceiling for low ash PVA could vary from a maximum ash content of 0,09 % to 0,5 %. The user concerned would not be amongst the most restrictive, i.e. its ash ceiling would probably be considered by other interested parties as rather high.

(9) As concerns the issues raised by this party and mentioned under recital 7, they have been seriously considered and can be summarised as follows.

(i) ***The contested grade would have different basic physical and technical characteristics***

(10) It is to be recalled that the basic physical and technical characteristics of the product concerned were provisionally defined in recital 14 of the provisional Regulation. The product concerned is therein defined as a specific kind of resin with certain technical parameters. The parameters mentioned in this product definition and used to distinguish between product concerned and other grades of PVA refer to viscosity (3 mPas -61 mPas, measured in 4 % solution) and hydrolysis (84,0 mol % -99,9 mol %).

(11) All grades falling under the product definition are sometimes referred to as standard grades, which means that they can all be produced on a standard PVA production line and the production costs of these grades are similar. The opposite is true for the grades which fall under the same CN-code but outside the product definition: they cannot be produced on a standard PVA production line, require a different production technology and additional equipment, and the production cost can therefore be very different. The grades not covered by the product definition have also very different properties when compared to those covered by the product definition. As concerns the degree of viscosity and hydrolysis: (i) the low viscosity grades are low molecular weight PVA which are difficult to handle, *inter alia*, resulting in a low production yield, whereas (ii) the high viscosity grades, which are also difficult to handle, are used for high-end glossy paper coatings, a very special type of application where unwanted cracks which are usually formed have to be avoided; (iii) high degree hydrolysis grades are also mainly used for that application and (iv) PVA grades with a low degree of hydrolysis are not soluble in water or form unstable solutions with water. Such products are essentially used for the production of suspension PVC and at elevated temperatures such products will fall out of solution.

(12) The user submitted that to produce the PVB resin it would need for producing its PVB-film, six characteristics of the PVA were of absolute importance. The combination of the parameters for these six characteristics would make the contested grade unique as compared to all other PVA grades on the market. Whilst analysing this claim, it was indeed found that for some applications the technical specifications can be more stringent than for others. At the same time, however, it was established that as a matter of fact all grades, including the commodity grades falling under the product scope and sometimes referred to as 'standard grades', have a unique combination of characteristics. Depending on the desired application, one or another grade would be chosen. This is valid not only for the application of the user concerned, but for other applications too. Consequently, the claim had to be dismissed.

(ii) ***The contested grade would have very specific end-uses***

(13) The user concerned also contested the Commission's appreciation of the PVA user market and specifically alleged that the PVB user market would be very diverse. In this respect, as already indicated in the provisional Regulation, the user used this grade of PVA for the production of PVB which is the largest application in the Community, accounting for 25 % to 29 % of PVA consumption, and also the fastest growing application because of the strong increase in demand for PVB-film. Further down-stream, the investigation has also shown that close to 90 % of the PVB produced in the Community is consequently used for the production of PVB-film, which is also the eventual application by the user concerned (but it is not the only PVB-film producer in the Community). It is therefore confirmed, as mentioned in recital 17 of the provisional Regulation, that the specific use of this interested party is one of the main applications which, in view of its market importance, cannot be characterised as not standard.

(14) As concerns its alleged specific use, the user concerned also argued that the contested grade could not be substituted by other models which would illustrate this specific end-use. In this respect, it was firstly established that this user was not buying exclusively from the Chinese producer concerned and already had several alternative sources. In fact, during the IP it sourced less than 5 % of its purchases of PVA for which it claimed exclusion from the producer in the PRC. The remaining purchased volumes were sourced from three other producers in different countries. Moreover, it was established that although most of the other grades sold on the Community market indeed could indeed not be used as an alternative to the contested grade, the contested grade itself could be used in other applications, too, and it was made available on the Community market at prices similar to those of other grades imported from the PRC. In view of the above, the argument that the contested grade could not be substituted had to be dismissed.

(iii) ***The contested grade would be a co-polymer, not a homopolymer***

(15) Following the imposition of provisional measures, the user claimed that low ash PVA would be a co-polymer and not a homopolymer. This claim was based on the fact that it would contain two building blocks. This issue was investigated and it was found that PVA is the result of an initial hompolymeric polymerisation. However, the subsequent hydrolysis process is always incomplete (between 84,0 mol % and 99,9 mol %) and to that extent, it could also be argued that PVA contains two building blocks and can be referred to as co-polymer.

(16) In order to avoid any confusion, it was therefore deemed appropriate to clarify the product scope definition determined in the provisional Regulation. Therefore, the product concerned is definitively defined as certain co-polymeric polyvinyl alcohols (PVA) based on a homopolymeric polymerisation with a viscosity (measured in 4 % solution) of 3 mPas or more but not exceeding 61 mPas and a degree of hydrolysis of 84,0 mol % or more but not exceeding 99,9 mol % originating in the People's Republic of China and Taiwan and normally declared within CN code ex 3905 30 00.

D. **DUMPING**

1. **Taiwan**

(17) With regard to Taiwan, no provisional measures were imposed, because, as stated in recitals 29 and 30 of the provisional Regulation, no dumping was provisionally found regarding imports of the product concerned originating in Taiwan.

(18) As mentioned in recital 30 of the provisional Regulation, the sole cooperating Taiwanese company, Chang Chun Petrochemical Co. Ltd. (CCP) is the only exporting producer of the product concerned in Taiwan, and it accounted for 100 % of the Taiwanese exports to the EC during the investigation period as reported by Eurostat.

(19) Both Community producers, Kuraray Europe GmbH and Celanese Chemicals Ibérica S.L. claimed that CCP was in fact dumping during the IP, and requested the Commission to reconsider its findings with regard to the dumping determination for CCP.

1.1. *Raw material costs*

(20) Both Community producers claimed that CCPs cost of production was much higher than what was found by the Commission, because the costs for vinyl acetate monomer (VAM), which is the main raw material used in the production of PVA, had been underestimated. They stressed in this respect that CCPs VAM supplier is a related company. In support of its arguments, one Community producer submitted a study on CCPs PVA business carried out by a consultancy firm, as well as publications on international VAM prices.

(21) The information submitted was examined. A comparison between the VAM prices listed in the abovementioned publications and the prices verified in the course of the proceeding both in Asia and in Europe clearly shows that the prices published in those publications are overstated. In addition, the publications themselves state that the published prices are estimates, that actual prices in the market may be either higher or lower and that the best use of the published prices is as indices. Indeed, even though such prices may be used to monitor trends over time, they do not appear to represent actual prices.

(22) Moreover, the investigation has shown that the VAM sales made by the related supplier to CCP were made at prices in line with those charged to this supplier's unrelated customers and that the prices paid for VAM by CCP were consistent with those paid by other producers in Asia, notably in Japan.

(23) In addition, the VAM costs contained in the study mentioned above were based on a higher VAM consumption rate than the actual CCP one. Considering that VAM consumption rate depends on the mix of fully and partially hydrolysed PVA, CCPs actual VAM consumption rate was found to be consistent with that of other producers, as verified, both in Asia and in the Community, taking into account the respective product mixes.

(24) For the reasons detailed in recitals 20 to 23, it was therefore concluded that CCP's VAM costs had not been underestimated and the claims concerning this issue were therefore rejected.

1.2. *Other costs*

(25) On the basis of the costs contained in the abovementioned study, one of the two Community producers claimed that in addition to the VAM, other cost elements of CCP's cost of production of PVA, such as those related to utilities, other manufacturing overheads and SG&A, had been underestimated. However, no specific evidence was submitted to support the cost estimates made in the study.

(26) The actual data verified for CCP on the spot was re-examined and it was confirmed that the correct costs have been used in the dumping calculations. The claim was therefore rejected.

1.3. *Calculation of normal value*

(27) One Community producer claimed that for CCP, the normal value should have been constructed for all product types, because there is a particular market situation on the Taiwanese PVA market due to artificially low prices particularly as compared to price ranges published for Asia, and also because most of the Taiwanese domestic sales were made to related customers during the IP.

(28) There is in fact no evidence on the basis of which Taiwanese domestic sales prices could be considered as artificially low. The published PVA prices are only price ranges of a very general nature given for Asia (excluding China) as a whole, without specifying the actual grades or product types in question, and therefore cannot be used in any price comparison for Taiwan. On this basis, Taiwanese domestic sales prices cannot be considered as artificially low. As concerns the alleged absence of sufficient domestic sales to independent customers, it is confirmed that sales to independent customers were found to be made in sufficient quantities to determine normal value.

(29) The same Community producer also claimed that, because of an alleged particular market situation due to artificially low PVA prices on the Taiwanese market, the profit used in the constructed normal values for CCP should not be based on the chapeau of Article 2(6) of the basic Regulation.

(30) For the reasons mentioned in recital 28, there is no reason why the profit based on the chapeau of Article 2(6) of the basic Regulation would not be appropriate for the constructed normal values. The claim was therefore rejected.

(31) The interested parties were informed of the above findings and given a period within which they could make comments. No additional information was received from the Community producers or any other interested party which would alter the Commissions provisional dumping determination for Taiwan.

(32) In view of the above, it is confirmed that the dumping margin determined for Taiwan is less than 2 %, expressed as a percentage of the export price, as mentioned in recital 29 of the provisional Regulation. Therefore, in accordance with Article 9(3) of the basic Regulation, the present proceeding should be terminated in respect of imports of the product concerned originating in Taiwan.

2. **People's Republic of China (PRC)**

2.1. *Market Economy Treatment and Individual Treatment*

(33) In the absence of comments in respect of the MET and IT determinations, recitals 31 to 39 of the provisional Regulation are hereby confirmed.

2.2. *Analogue country*

(34) Both Community producers, Kuraray Europe GmbH and Celanese Chemicals Ibérica S.L. reiterated that Japan should be selected as analogue country for the PRC instead of Taiwan.

(35) They claimed that Japan would be a more suitable analogue country than Taiwan because competition in the Japanese PVA market is far more vigorous than in the Taiwanese market as: (i) the Taiwanese market is dominated by the sole Taiwanese producer, CCP, whereas in Japan there are four producers; (ii) imports of PVA falling under the scope of the investigation into Taiwan are limited, and (iii) the domestic demand for the like product in Taiwan is low.

(36) Regarding the alleged market dominance of CCP in Taiwan, it has to be recalled that the level of competition is also influenced by imports and in this respect, as already stated in recital 46 of the provisional Regulation, Taiwan has in fact a higher proportion of imports in terms of domestic consumption (15 %) than Japan (3 %).

(37) As for the claim that imports of PVA would mainly refer to products falling outside the product scope of the investigation, this allegation was not supported by sufficient evidence and thus could not be accepted.

(38) As concerns the allegedly limited demand for the like product in Taiwan, it has to be emphasised that the Taiwanese domestic market of PVA exceeds 15 000 tonnes, most of which being the like product. In addition, although one Community producer claimed that there is actually limited demand because most of CCP's sales are made to related customers, the contrary was confirmed by the investigation. For these reasons, the claim regarding limited demand for the like product was dismissed.

(39) For the reasons set out in recitals 36 to 38, the claim regarding insufficient competition on the Taiwanese market was rejected.

(40) One Community producer claimed that both in terms of production and sales, the Japanese PVA market is far more representative of the PRC market than Taiwan. However, even if Taiwanese production and domestic sales are lower than production and domestic sales in Japan, they are still sufficiently substantial to make a comparison to Chinese PVA and its exports to the EC appropriate.

(41) The same Community producer also stated that Japan would be a more suitable analogue country than Taiwan as in Japan both integrated and non-integrated PVA producers exist, like in the PRC. However, it is important to note that, whilst it is true that in the PRC both types of producers exist, the Taiwanese producer and the sole cooperating and verified Japanese producer have both integrated PVA production processes. Therefore, this aspect cannot be relevant in preferring Japan to Taiwan.

(42) The same Community producer also claimed that the product mix and the applications of PVA on the Japanese market are more comparable to those in the PRC. In this respect, it is confirmed that the product mix and the applications on the Taiwanese market are such as to guarantee a proper comparability between the Taiwanese and the Chinese PVA, whilst there is no evidence that Japanese PVA would have ensured a better comparability.

(43) Finally, the level of cooperation in the selected country is an important element for establishing a reliable normal value. In Japan only one of the four producers of the like product cooperated in the investigation, whereas in Taiwan all the necessary data was available for the whole country, given that Taiwan was subject to the investigation. Indeed the Taiwanese company represented a much wider market share on its domestic market than the sole cooperating Japanese producer, thereby allowing better assessment of the normal value.

(44) In view of the reasons detailed in recitals 36 to 43, the claim of both Community producers that Japan is the most appropriate analogue country for the PRC was rejected and recitals 40 to 46 of the provisional Regulation are hereby confirmed.

2.3. *Normal value*

(45) One Community producer claimed that the normal value of the analogue country, Taiwan, should have been constructed for all product types, and the profit used in the constructed normal value should not have been based on the chapeau of Article 2(6) of the basic Regulation, because there is a particular market situation in Taiwan due to artificially low prices.

(46) However, for the reasons detailed in recitals 28 to 30, these claims were rejected. In the light of this, recital 47 of the provisional Regulation is hereby confirmed.

2.4. *Export price*

(47) In the absence of comments in respect of the export price, recitals 48 to 50 of the provisional Regulation are hereby confirmed.

2.5. *Comparison*

(48) In the absence of comments in respect of the comparison, recital 51 of the provisional Regulation is hereby confirmed.

2.6. *Dumping margin*

(49) In the absence of comments in respect of the dumping margin, recitals 52 and 53 of the provisional Regulation, according to which the country-wide dumping margin for the PRC is 10 %, are hereby confirmed.

E. **INJURY**

1. **Community production and Community industry**

(50) In the absence of any new and substantiated information or argument in this respect, recitals 54 to 60 of the provisional Regulation are hereby confirmed.

2. **Community consumption**

(51) In reviewing the statistical information available from Eurostat and cross-checking it with information available through other sources, it appeared that the imports from the USA as set out in the provisional Regulation were understated, notably as concerns 2003 (see recital 80). It was therefore decided to replace these data by data from the USA export database. After final disclosure it was further established that the figures concerning Chinese PVA imports reported by Eurostat were erroneous and needed to be corrected (see recital 56).

(52) The consumption figures were accordingly revised as follows:

	2003	2004	2005	IP
Consumption in tonnes	143 515	154 263	166 703	166 755
Index (2003 = 100)	100	107	116	116

(53) This shows that the demand for the product concerned during the period considered increased by 16 %. The other conclusions, as summarised in recital 64 of the provisional Regulation, remain valid.

(54) In the absence of any other new and substantiated information or argument in this respect, recital 61 to 64 of the provisional Regulation are hereby confirmed, with the exception of the changes made to recital 61 and recital 64 as set out above.

3. **Imports from the countries concerned**

(55) As it is confirmed that the dumping margin for Taiwan is *de minimis*, imports originating in Taiwan are definitely excluded from the injury assessment.

(56) After final disclosure, certain interested parties expressed serious doubts as concerns the reliability of the Eurostat figures on PVA imports from the PRC in 2003. The matter was investigated and it was found that there had been a significant misreporting concerning those imports. Consequently, the volumes of PVA imports from the PRC were corrected as follows:

Imports	2003	2004	2005	IP
PRC tonnes	16 197	14 710	21 561	21 513
Index (2003 = 100)	100	91	133	133

(57) Instead of a decrease of Chinese imports during the period considered, as established at the provisional stage based on the erroneous 2003 data, imports from the PRC increased by 33 % over the period considered, whereas they dropped by 9 % in 2004 as compared to 2003.

(58) In view of this and the revised Community consumption data (see recital 51), the market share of the imports from the PRC is accordingly modified over the period considered as follows:

Market share PRC	2003	2004	2005	IP
Community market	11,3 %	9,5 %	12,9 %	12,9 %
Index (2003 = 100)	100	84	115	114

(59) The market share held by imports from the PRC increased by 1,6 percentage points during the period considered. During the IP, Chinese imports accounted for 12,9 % of the whole Community market.

(60) In view of the revised 2003 import data, the import prices originating from the PRC as described in recital 68 of the provisional Regulation have been modified accordingly. The average price of the imports thus decreased by 3 %.

Unit prices	2003	2004	2005	IP
PRC (EUR/tonne)	1 162	1 115	1 164	1 132
Index (2003 = 100)	100	96	100	97

(61) Subsequent to definitive disclosure, the complainant submitted that the Commission should not have excluded any matching models from the undercutting calculation. It alleged that by doing so, the Community prices of imports from the PRC would have been dramatically overstated. With regard to this matter, in recital 70 of the provisional Regulation it is indeed stipulated that a limited number of models (PCNs) was excluded from the undercutting comparison as it was considered that the comparison per model had to be meaningful and fair and, therefore, no comparison between a standard grade and a special grade falling within the product definition should be allowed.

(62) The PCNs concerned accounted for 34 % of Chinese imports during the IP, but the Community industry (not the complainant) produced them in very small volumes, representing 0,1 % to 0,5 % of its sales of the like products during the IP. Whereas the imports from the PRC of PVA within these PCNs concerned a standard grade PVA, the Community producer of these PCNs had submitted to the Commission that in its case the PCNs in question concerned high-end speciality products for use in niche applications which cannot be substituted by standard PVA. Furthermore, they had not been produced on its standard production line but in its speciality plant through a batch manufacturing process. It was also specifically reported by the Community producer concerned that this PVA did not compete with standard PVA. Accordingly, it was concluded by the Commission that for these PCNs imported from the PRC, which were standard PVA, there were no matching grades sold by the Community industry. In view of the fact that the undercutting calculation could then still be based on representative volumes (i.e. 54 % of the imports concerned), it was decided to exclude these PCNs from the comparison.

(63) On that basis, and as the submission of the complainant did not contain any evidence to the contrary, it is confirmed that the exclusion of these PCNs from the undercutting calculations is justified and the claim is, therefore, dismissed.

(64) In the absence of any other new and substantiated information or argument in this respect, recitals 65 to 71 of the provisional Regulation are hereby confirmed, with the exception of the Chinese import and market share data, which issues have been addressed above.

4. **Situation of the Community industry**

Market shares in the Community

(65) Given the revised figures for Community consumption (see recital 51), the market share of the Community industry is accordingly modified over the period considered as follows:

Market share Community Industry	2003	2004	2005	IP
Index (2003 = 100)	100	101	96	103

(66) As concluded in recital 76 of the provisional Regulation, the Community industry has, in terms of sales volumes, benefited from the increasing demand on the Community market.

5. **Conclusion on injury**

(67) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several parties claimed that most injury indicators had developed positively, therefore there would be no material injury. It was even submitted by one interested party that the Commission had concluded that the Community industry had suffered material injury on the basis of the decline in Community industry sales prices only.

(68) In this respect, it should be recalled that, as indicated in recital 90 of the provisional Regulation, indeed a number of indicators developed positively during the period considered, due to the strong and increasing demand on the Community market. However, the price depression on the Community market coupled with the worldwide strong increase of main raw material costs has lead to a negative development of all financial indicators such as profitability, return on investment and cash flow. This is explained in detail in recitals 84 and 85 of the provisional Regulation. Although, as stated in Article 3(5) of the basic Regulation, not one or more of the relevant economic factors which are evaluated in this respect necessarily give decisive guidance, it is obvious that the financial indicators are amongst the key indicators. The argument, therefore, has to be dismissed.

(69) In the absence of any further new and substantiated information or argument on the situation of the Community industry, recitals 72 to 92 of the provisional Regulation are hereby confirmed, with the exception of recitals 75 and 76 which have been addressed above.

F. **CAUSATION**

1. **Effects of the dumped imports**

(70) Several interested parties pointed at the provisional finding that Chinese imports dropped strongly between 2003 and 2004. They claimed that in view of the fact that in the same period, the profitability of the Community industry deteriorated dramatically by 62 %, the price depression could not have been caused by the Chinese imports.

(71) In this respect it is to be recalled that the investigation had established that imports from the PRC undercut the Community industry prices by 3,3 % during the IP and that imports from the PRC have, throughout the period considered, been declared at the Community frontier at prices lower than those obtained by the Community industry. The difference between Eurostat import prices from the PRC and Community industry sales prices appears to be more significant in 2003 than during the IP. However, on the basis of such analysis no conclusion can be drawn as regards the undercutting in the years preceding the IP; an accurate and reliable undercutting margin can only be calculated for the IP as it should be made on the basis of a model-by-model comparison and whilst making the appropriate adjustment for (post-) importation costs and differences in level of trade. Such data were only available for the IP. No conclusion can therefore be drawn as to whether imports from the PRC have undercut the Community industry prices throughout the period considered.

(72) The investigation had further established that there was a significant price depression on the market. This price depression was injurious in view of the strong increase in the main raw material costs throughout the same period, as elaborated in recitals 78 and 79 of the provisional Regulation. In view of the comments received and mentioned in recital 70, the development of raw material prices during the period considered was analysed on a year-by-year basis. As mentioned in recital 78 of the provisional Regulation, vinyl acetate monomer (VAM) is PVAs key raw material. It accounts for approximately 65 % of the manufacturing cost of PVA. The table below displays the cost of VAM per tonne of PVA during the period considered:

Community industry	2003	2004	2005	IP
Cost of VAM per tonne PVA				
Index	100	107	119	130

(73) The analysis showed that in 2004, the increase in raw material costs was moderate as compared to the increase of these costs in 2005 and the IP. In view of this development of raw material prices, which is best illustrated by the development of VAM-costs above and which did not closely correspond with the trend in profitability, it can be concluded that the sharp decrease in profitability during 2004 was caused more by the 7 % decrease in Community industrys sales prices, as indicated in recital 79 of the provisional Regulation, than by the increase in raw material costs.

(74) Following the above, the market shares in 2004 were analysed further in absolute terms as well as compared to 2003 to establish whether the dumped imports, taken in isolation, have had a material impact on the injury. It was established that during 2004 the Community industry increased its market share by 1 %. At the same time, Chinese imports lost 16 % of their market share. The result was that during 2004, the market share of the Community industry accounted for more than fourfold the market share of the PRC. In these circumstances, it is indeed considered difficult to attribute the price depression in the pivotal year 2004 to the imports from the PRC, as its quantities were relatively low and strongly declining.

(75) Following definitive disclosure, the Community industry argued that even with a low market share the dumped imports managed to cause severe disruption on the market, due to the nature of the business. It claimed that the Commission would have argued that PVA is a commodity, and that the lowest price quoted on the market determines to a large extent the market price, which other producers have to adapt to, if they wish to keep their orders. It should be clarified that the Commission had, in the definitive disclosure document, only cited a claim of the complainant without endorsing it. The complainant further argued that this alleged influence of imports from the PRC on the Community industry sales prices would be demonstrated by the decreasing trend in the Community industry's sales prices over the period considered, while prices of the main raw material, VAM, soared. The Community industry maintained that it was not in a position to pass on the increase in raw material prices to its customers due to the strong price pressure of the dumped imports which would have led to a pronounced decrease in profitability, return on investments and cash flow.

(76) Nevertheless, when looking at the development in more detail, it appears that the considerable deterioration of the Community industry's financial situation occurred mainly as from 2004 until the IP. In 2003, when imports from the PRC had a market share of 11,3 % and sales prices did not vary much from the subsequent years, the Community industry was performing satisfactorily, in particular in terms of profitability. This evaluation is supported by the fact that even the Community industry had characterised (2002 and) 2003 as a year 'before the major import penetration by the dumped imports on the Community market'. This was corroborated by the findings of the investigation and it was thus considered in recital 131 of the provisional Regulation, that 2003 was indeed a year in which there was a normal competitive situation on the Community market. This had not been contested by any of the interested parties and it would suggest that during 2003, trade distortions, if any, were limited. In 2004, on the contrary, when imports from the PRC decreased while its sales price remained fairly stable, the Community industrys financial situation suddenly deteriorated dramatically.

(77) Following definitive disclosure, the Community industry claimed that the Commission would erroneously require the dumped imports to be the principal cause of injury. In this respect, it is noted that the Commission did not require the dumped imports to be the principle cause of injury. Indeed, Article 3(6) of the basic Regulation stipulates that 'volumes and/or price levels (…) are responsible for an impact on the Community industry (…) and that this impact exists to a degree which enables it to be classified as *material* (emphasis added).'

(78) A further analysis of the facts as established during the investigation has shown that the dumped imports, taken in isolation, have had an impact on the injurious situation of the Community industry, but given its overall limited market shares in relation to the increasing market shares of the Community industry and a missing clear coincidence in time between the dumped imports and the most injurious situation of the Community industry, this impact is not considered to be material.

(79) Based on the above considerations, it cannot be concluded that the dumped imports have had an impact on the injury suffered by the Community industry that can be classified as material.

2. **Effects of other factors**

(80) Subsequent to the imposition of provisional measures, information was obtained which pointed at the incompleteness of the Eurostat data as regards imports from the USA. The volumes reported appeared to be too low if compared to export data from the USA export database but also to other sources. The data concerning these imports therefore had to be revised and it was found most appropriate to replace them by the data acquired from the USA export database, whereby the values, converted into Euro, were duly adjusted to CIF Community frontier level. The impact of the revised import volumes from the PRC in 2003 on the calculated Community consumption also affected the market shares of other countries in that year. The tables in recital 97 of the provisional Regulation have therefore been amended as follows:

Imports originating in other third countries (quantity)

Import (tonnes)	2003	2004	2005	IP
USA	19 804	26 663	25 771	26 298
Index (2003 = 100)	100	135	130	133
Japan	13 682	11 753	12 694	14 151
Index (2003 = 100)	100	86	93	103
Taiwan (ranges)	11 000-14 000	13 000-16 500	10 000-13 000	9 000-12 000
Index (2003 = 100)	100	118	88	83

Imports originating in other third countries (average price)

Average price (EUR)	2003	2004	2005	IP
USA	1 308	1 335	1 446	1 416
Index (2003 = 100)	100	102	111	108
Japan	1 916	1 532	1 846	1 934
Index (2003 = 100)	100	80	96	101
Taiwan	1 212	1 207	1 308	1 302
Index (2003 = 100)	100	100	108	108

Market shares

Market share (%)	2003	2004	2005	IP
USA	13,8	17,3	15,5	15,8
Japan	9,5	7,6	7,6	8,5
Taiwan (index)	100	109	76	71

(81) Compared to the provisional Regulation, the main difference consists in the quantities of USA imports and the trend that can be observed as regards those imports. Indeed, during the period considered, there was a slight increase of imports of PVA from the USA only, i.e. an increase by 2 percentage points in terms of market share whereas it was erroneously concluded in the provisional Regulation that they had doubled during that period. Furthermore, the CIF Community frontier prices of these imports appear to be generally higher than provisionally concluded, with prices that were 4,3 % higher during the IP. The other conclusions with regard to these imports, as summarised in recital 98 of the provisional Regulation, remain valid.

(82) Referring to recitals 97 and 99 of the provisional Regulation, several interested parties expressed serious doubts as to the reliability of the Eurostat prices on Japanese imports, as the average unit prices of these imports were significantly higher than the unit prices of PVA from other sources. One interested party claimed that the high average sales price could stem from an erroneous inclusion of other more expensive products, such as PVB. In this respect, it is important to underline that these data had been investigated in detail and that on the basis of that analysis it had been concluded, as indicated in recital 99 of the provisional Regulation, that Japanese imports could not have contributed to the negative price trend which led to the serious deterioration of the Community industry's financial situation. For the sake of completeness and clarity, a summary of this analysis follows.

(83) A further examination of the Eurostat data concerning imports from Japan confirmed that it did not include any products other than PVA and that, hence, the data were not inflated by more expensive products. Further, as was already indicated in the complaint, the Japanese PVA imports included certain limited quantities of PVA other than the like product, with probably significantly higher unit prices. In the average value computed for Japanese imports, based on the statistical data, the price influence of these other PVA-grades could not be neutralised as these data do not distinguish the like product from other PVA-grades. However, taking into account the approximate volumes of such imports, based on the data in the complaint, and in view of the average price computed for all Japanese PVA imports during the IP, it had been established that it would be very unlikely that the exclusion of the PVA grades not falling under the product definition would result in an average CIF Community frontier price of the like product, which would undercut the Community sales price level during the IP. Moreover, around 25 % of the Japanese imports during the IP could be verified and they concerned PVA grades falling under the product scope. These sales were made to related parties, i.e. at transfer prices, and it had been found that the resale prices of these purchases to the first independent customers in the Community were on average 8 to 10 % above the prices that the Community industry could obtain. It was consequently concluded and it is maintained that there are no indications that Japanese imports of PVA, during the IP, have undercut the Community industry prices and, therefore, they are not considered to have contributed to the injury suffered by the Community industry.

(84) It was also questioned by several interested parties how Japanese imports managed to maintain a strong market share with such high prices, if there was a fierce price competition on the Community market. In this respect, it should first be noted, as mentioned in recital 83 above, that the inclusion of other and more expensive grades of PVA certainly has inflated the Eurostat average values of Japanese import prices. Based on verified data pertaining to around 25 % of Japanese imports, average prices of these imports to the first independent customer in the Community appear rather to be 8 to 10 % above the Community industry prices. This is not the result of a precise comparison between identical grades; it is rather the likely and approximate price difference between the average sales prices of a part of Japanese imports and the average sales price obtained by the Community industry. On that basis, the result of the analysis of the Japanese import prices does not contradict the conclusion that market prices in the Community were indeed depressed, and the argument is dismissed.

(85) One interested party claimed that the volumes of Taiwanese imports had increased from 2003 to 2006, contrary to the Commission's findings of a market share decrease, and that the average prices of these imports increased less than what the Commission had found. This claim was based on an analysis of Eurostat data. In this respect, it should be noted that, as indicated in recital 100 of the provisional Regulation, the actual figures of the sole Taiwanese producer have been used as it fully cooperated in the investigation. These verified data were considered more reliable than Eurostat data, especially as this producer also sold, throughout the period considered, significant quantities of PVA which were covered by CN code ex 3905 30 00 but did not fall under the product definition. The claim of this interested party, therefore, had to be dismissed.

(86) Another interested party claimed, in view of the Commission's analysis of USA import prices that Taiwanese imports would have contributed to the price depression on the Community market. It alleged that for the purpose of computing average prices to first independent customer, the Commission had adjusted Eurostat's USA import prices, which were already above Taiwanese prices, upwards and so adjusted, these prices were at the same general level as Community industry prices. Therefore, Taiwanese prices, which would not need any adjustment, would be undercutting the Community industry prices and contribute to the injury suffered by the Community industry.

(87) This claim had to be rejected. In fact, the prices of Taiwanese imports in recitals 97 and 100 of the provisional Regulation are the prices at cif Community frontier level. For the purpose of the undercutting calculations, a number of adjustments have been made to those prices (import duty, post importation costs, level of trade). In this case, the level of trade adjustment was significant as virtually all sales were done via traders/distributors in the Community. The subsequent undercutting calculations could then be done at PCN-level, thus resulting in very precise figures which did indeed not show undercutting.

(88) Several interested parties claimed that the drop in profitability was caused by the Community industry itself. They claimed that because of the creation of extra production capacity in 2004, the Community industry found itself confronted with large additional quantities of produced PVA which it had to sell. It was argued by these parties that the complainant itself would therefore have engaged in an aggressive policy of undercutting all other PVA suppliers with a view to maximising its sales volumes and excluding other competitors from the market. According to these parties, this would explain the decline in PVA prices during the period considered. They considered that the Chinese producers were price followers rather than price setters.

(89) With regard to this argument, the investigation has indeed shown that the investments made by the Community industry to increase production capacity have enabled the Community industry to sell significant additional quantities on the Community market. This fact demonstrates, on the one hand, that the decision to make this investment had been a sound decision in terms of expected market growth. The consumption of PVA on the Community market had increased strongly during the period considered, as explained in recitals 51 to 53, and this had led to increasing sales overall. Furthermore, an analysis of post-IP data (July 2006 until September 2007) concerning Community consumption and sales based on Eurostat data and figures provided by parties subject to the investigation has confirmed that consumption increased significantly and that the Community industry further increased its sales volumes by 10 %.

(90) At the same time, however, it was established by the investigation that a PVA plant should produce continuously in order to maximise efficiency. This was also the case for the Community industry. The investigation showed that due to the expansion of capacity which took place from 2004 to 2006, the production volumes increased significantly as from 2004. The Community industry, following definitive disclosure, argued that the additional PVA production line was only available as of 2005 and that, thus, there was no additional capacity in 2004. However, the investigation has shown that during 2004 the production capacity was 7 % higher as compared to 2003. At the same time, the Community industry decreased its sales prices by 7 %, and in 2005, when the production capacity had reached 129 % of the capacity during 2003, prices were still 5 % below the 2003 level, in spite of strongly increasing raw material costs as indicated in recital 72 (+ 19 % for VAM). In the meantime, the Community industry had increased its sales volumes to independent customers by 12 % and it further increased those sales by another 10 percentage points in 2005. On this basis, it appears that there might be a relation between the sales prices of the Community industry and the quantity of PVA produced.

(91) Two interested parties argued that the investment in production capacity had caused the negative development of the key financial indicators, as the cost of it would have weighed heavily on the Community industry's profitability. In this respect, the investigation has established, as stated in recital 103 of the provisional Regulation, that the costs involved with the production capacity expansion could be identified and that they did not significantly influence the dramatically negative trend observed in the development of the financial position of the Community industry. The claim that these costs had caused the strong deterioration of the Community industrys most important financial indicators, therefore, has to be dismissed.

(92) One interested party claimed that pricing of the sales for captive use would have negatively influenced the profitability figures of the complainant. In this respect it is to be noted that the sales of PVA to related parties have been verified in depth. Firstly, these sales were isolated from the sales to unrelated parties. They are therefore not included in the financial indicators provided in recitals 84 and 85 of the provisional Regulation, as specifically mentioned in recital 84. Secondly, the verification of the sales for captive use showed that the pricing of these sales, which represented less than 20 % of the Community industry total sales during the IP, did not have a negative impact on the reported result on the Community industry's PVA sales to unrelated parties. The claim was therefore dismissed.

(93) Another interested party claimed that that the allegedly depressed construction market in Germany during the first years of the period considered would have caused the negative development of the key financial indicators of the Community industry. However, no evidence to demonstrate this was submitted and the statistical data clearly show a trend of increasing consumption for PVA and an even more marked trend of increasing consumption of PVB. The argument, therefore, had to be dismissed.

(94) Following definitive disclosure, the Community industry claimed that by focussing on 2003 and 2004, no sufficient causation analysis of the years 2004 until 2006 was performed. In this respect it is firstly to be noted that 2003 and 2004 are the first two years of the period considered and as such they can certainly not be regarded as outdated. Furthermore, as summarised in recital 91 of the provisional Regulation, the group of indicators showing injury are the financial indicators whilst most of the other indicators show a positive development. In such a situation it is only reasonable that the investigating authority pays more attention to the period where the financial indicators deteriorated the strongest, which happened to be 2004 when the Community industrys profitability decreased by 62 %, its ROI decreased by 83 %, and its cash flow decreased by 45 %. Finally, as recitals 70 to 93 demonstrate, it is considered that the causation analysis is not limited to the years 2003 and 2004 and it covers the complete period considered, i.e. from 2003 to the end of the IP (September 2006). The claim is, therefore, dismissed.

3. **Conclusion on causation**

(95) In conclusion, following a further analysis triggered by the comments received after the imposition of provisional measures, it cannot be confirmed that the dumped imports have had a material impact on the injury of the Community industry. Given (i) the relatively limited and only slightly increasing market share of the dumped imports from the PRC (from 11,3 % to 12,9 %) and the much more important and slightly increasing market share of Community industry sales (during the IP more than threefold the market share of the PRC) and (ii) the limited, even if not insignificant, undercutting practiced by imports from the PRC, it can be concluded that the low prices on the Community market in a context of increasing raw material prices, which have strongly contributed to the injury suffered by the Community industry, can not be attributed to the dumped imports from the PRC. The causal link within the meaning of Articles 3(6) and 3(7) of the basic Regulation between the dumped imports from the PRC and the material injury suffered by the Community industry could therefore not be sufficiently established.

G. **CONCLUSION**

(96) The proceeding should therefore be terminated, as the dumping margin determined for Taiwan is less than 2 % and due to the lack of evidence for a causal link between dumping and injury insofar as imports originating in the PRC are concerned,

DECIDED AS FOLLOWS:

Article 1

The anti-dumping proceeding concerning imports of co-polymeric polyvinyl alcohols (PVA) based on a homopolymeric polymerisation with a viscosity (measured in 4 % solution) of 3 mPas or more but not exceeding 61 mPas and a degree of hydrolysis of 84,0 mol % or more but not exceeding 99,9 mol %, falling within CN code ex 3905 30 00 and originating in the People's Republic of China and Taiwan, is hereby terminated.

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1069/2007 on imports of certain polyvinyl alcohols in the form of homopolymer resins with a viscosity (measured in 4 % solution) of 3 mPas or more but not exceeding 61 mPas and a degree of hydrolysis of 84,0 mol % or more but not exceeding 99,9 mol %, falling within CN code ex 3905 30 00 (TARIC code 3905 30 00 20) and originating in the People's Republic of China shall be released.

Article 3

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

Done at Brussels, 17 March 2008.

For the Commission

Peter MANDELSON

Member of the Commission

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2008/228/CFSP

of 17 March 2008

amending and extending Joint Action 2006/304/CFSP on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

(1) On 10 April 2006 the Council adopted Joint Action 2006/304/CFSP [1].

(2) On 4 February 2008 the Council adopted Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO [2]. That Joint Action provides *inter alia* that the EUPT Kosovo will act as the main planning and preparation element for EULEX KOSOVO, and that the EUPT Kosovo is to be responsible for recruiting and deploying staff and procuring equipment, services and premises intended for EULEX KOSOVO. It also provides that third States may second staff to EULEX KOSOVO and that, exceptionally, nationals from participating third States may be recruited on a contractual basis, as appropriate.

(3) The financial reference amount provided for in Joint Action 2006/304/CFSP to cover the expenditure related to the mandate of the EUPT Kosovo, throughout the whole period of the mandate as from 10 April 2006, should include the expenditure to be incurred during the remaining period of the mandate.

(4) Joint Action 2006/304/CFSP should be amended and extended accordingly,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Joint Action 2006/304/CFSP is hereby amended as follows:

1. Article 7 shall be replaced by the following:

'*Article 7*

Third States invited to contribute to EULEX KOSOVO in accordance with Article 13 of Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (*) may be invited to deploy seconded staff to the EUPT Kosovo, as appropriate, provided that they bear the cost of the staff seconded by them, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances. Exceptionally, in duly justified cases where no qualified applications from Member States are available, nationals from third States invited to contribute to EULEX KOSOVO may be recruited on a contractual basis, as appropriate.

(*) OJ L 42, 16.2.2008, p. 92.';

2. Article 9(1) shall be replaced by the following:

'1. The financial reference amount intended to cover the expenditure related to the EUPT Kosovo shall be EUR 79 505 000.';

3. Article 15(2) shall be replaced by the following:

'2. It shall expire on 14 June 2008.'.

[1] OJ L 112, 26.4.2006, p. 19. Joint Action as last amended by Joint Action 2007/778/CFSP (OJ L 312, 30.11.2007, p. 68).
[2] OJ L 42, 16.2.2008, p. 92.

Article 2

This Joint Action shall enter into force on the date of its adoption.

Article 3

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 17 March 2008.

For the Council
The President
I. JARC

COUNCIL JOINT ACTION 2008/229/CFSP

of 17 March 2008

amending Joint Action 2007/369/CFSP on the establishment of the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 14 thereof,

Whereas:

(1) On 30 May 2007 the Council adopted Joint Action 2007/369/CFSP [1] for a period of three years. The operational phase of EUPOL AFGHANISTAN started on 15 June 2007.

(2) The financial reference amount provided for in Article 13(1) of Joint Action 2007/369/CFSP should be extended to cover the period until 30 September 2008,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Joint Action 2007/369/CFSP is hereby amended as follows:

1. paragraph 1 of Article 13 shall be replaced by the following:

'1. The financial reference amount intended to cover the expenditure related to EUPOL AFGHANISTAN until 30 September 2008 shall be EUR 43 600 000.';

2. paragraph 2 of Article 13 shall be replaced by the following:

'2. The financial reference amount for the remainder of the year 2008, as well as for the years 2009 and 2010 for EUPOL AFGHANISTAN shall be decided by the Council.'

Article 2

This Joint Action shall enter into force on the date of its adoption.

Article 3

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 17 March 2008.

For the Council
The President
I. JARC

[1] OJ L 139, 31.5.2007, p. 33. Joint Action as amended by Joint Action 2007/733/CFSP (OJ L 295, 14.11.2007, p. 31).

COUNCIL JOINT ACTION 2008/230/CFSP

of 17 March 2008

on support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on Arms Exports among third countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

(1) On 26 June 1997 the Council adopted the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms, committing the EU and its Member States to take concerted action to assist other countries in preventing and combating the illicit trafficking of arms.

(2) On 8 June 1998 the Council adopted the European Union Code of Conduct on Arms Exports which sets up eight criteria for the export of conventional arms, establishes a notification and consultation mechanism for denials and includes a transparency procedure through the publication of the EU annual reports on arms exports. Since its adoption, the Code has contributed significantly to the harmonisation of national arms export control policies and its principles and criteria have been officially subscribed to by various third countries.

(3) Operative provision 11 of the European Union Code of Conduct on Arms Exports states that Member States will use their best endeavours to encourage other arms exporting States to subscribe to the Code's principles.

(4) The European Security Strategy adopted by Heads of State and Government on 12 December 2003 enunciates five key challenges to be faced by the EU in the post-Cold War environment: terrorism, the proliferation of weapons of mass destruction, regional conflicts, State failure and organised crime. The consequences of the uncontrolled circulation of conventional weapons are central to four of these five challenges. Indeed, the uncontrolled transfer of arms contributes to a worsening of terrorism and organised crime, and is a major factor in triggering and spreading conflicts, as well as in the collapse of State structures. In addition, the Strategy underlines the importance of export controls to contain proliferation.

(5) The International Instrument to enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, adopted by the United Nations General Assembly on 8 December 2005 aims to enhance the effectiveness of, and complement, existing bilateral, regional and international agreements to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects.

(6) The EU Strategy to combat illicit accumulation and trafficking of small arms and light weapons (SALW) and their ammunition, adopted by the European Council on 15 and 16 December 2005, provides that the EU should, at regional and international level, support the strengthening of export controls and the promotion of the criteria of the Code of Conduct on Arms Exports by, *inter alia*, helping third countries to draft national legislation on this and promoting measures to improve transparency.

(7) On 6 December 2006 the United Nations General Assembly, with the support of all Member States of the European Union, adopted Resolution 61/89, entitled 'Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms'. In December 2006 and June and December 2007 the Council adopted conclusions underlining that it is important for the EU and Member States to play an active role and cooperate with other States and regional organisations in the process within the United Nations to establish common international standards for the import, export and transfer of conventional arms, which would be a major contribution to tackling the undesirable and irresponsible proliferation of conventional arms which undermines peace, security, development and full respect for human rights.

(8) The action plans agreed between the EU and partner countries under the European Neighbourhood Policy contain either a direct reference to the EU Code of Conduct on Arms Exports or to the development of effective systems of national export controls,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. For the purposes of the practical implementation of:

— the European Security Strategy,

— the EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition,

— operative provision 11 of the European Code of Conduct on Arms Exports,

— the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms,

— the International Instrument to enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

— the action plans in the framework of the European Neighbourhood Policy, and

— the Council Conclusions on a International Arms Trade Treaty,

the European Union shall support activities in order to further the following objectives:

(a) to promote the criteria and principles of the EU Code of Conduct on Arms Exports among third countries;

(b) to assist third countries in drafting and implementing legislation to ensure effective control of arms exports;

(c) to assist countries in the training of licensing officers to ensure adequate implementation and enforcement of arms export controls;

(d) to assist countries in the elaboration of national reports on arms exports and the promotion of other forms of scrutiny in order to promote transparency and accountability of arms exports;

(e) to encourage third countries to support the United Nations process aiming at the adoption of a legally binding international treaty establishing common standards for the global trade in conventional arms, and to assist in ensuring that they are in a position to comply with such possible common standards.

2. A description of the projects furthering the objectives, as referred to in paragraph 1, is set out in the Annex.

Article 2

1. The Presidency, assisted by the Secretary-General of the Council/High Representative for the Common Foreign and Security Policy (SG/HR), shall be responsible for the implementation of this Joint Action. The Commission shall be fully associated.

2. The technical implementation of the projects referred to in Article 1(2) shall be entrusted to:

— the Slovenian Centre for European Perspective, acting on behalf of the Ministry of Foreign Affairs of the Republic of Slovenia, with regard to the projects concerning the Western Balkans countries and Turkey,

— the Ministry of Foreign and European Affairs of the Republic of France, with regard to the project concerning North African and Mediterranean countries,

— the Ministry of Foreign Affairs of the Czech Republic, with regard to the projects concerning the Western Balkans countries and Ukraine,

— the Swedish Inspectorate of Strategic Products, acting on behalf of the Ministry of Foreign Affairs of the Kingdom of Sweden, with regard to the project concerning Armenia, Azerbaijan, Belarus, Georgia and Moldova.

3. The Presidency, the SG/HR and the Commission shall keep each other regularly informed of the implementation of this Joint Action, in conformity with their respective competences.

Article 3

1. The financial reference amount for the implementation of the projects referred to in Article 1(2) shall be EUR 500 500, to be funded from the general budget of the European Union.

2. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the European Community procedures and rules applicable to the general budget of the European Union. Expenditure shall be eligible, including indirect costs, as from the date of entry into force of this Joint Action.

3. The Commission shall supervise the proper implementation of the EU contribution referred to in paragraph 1. For this purpose, it shall conclude Financing Agreements with the implementing entities mentioned in Article 2 on conditions for the use of the EU contribution. The financing agreements shall stipulate that the implementing entities are to ensure visibility of the EU contribution, appropriate to its size.

Article 4

The Presidency, assisted by the SG/HR, shall report to the Council on the implementation of this Joint Action. Reports shall form the basis for the evaluation carried out by the Council. The Commission shall be fully associated and shall provide information on the financial implementation of the projects as referred to in Article 3(3).

Article 5

This Joint Action shall enter into force on the day of its adoption.

It shall expire on 17 March 2010.

Article 6

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 17 March 2008.

For the Council
The President
I. JARC

ANNEX

Support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on Arms exports among third countries

I. **Objectives**

The overall objectives of this Joint Action are:

(a) to promote the criteria and principles of the EU Code of Conduct on Arms Exports among third countries;

(b) to assist third countries in drafting and implementing legislation to ensure effective control of arms exports;

(c) to assist countries in the training of licensing officers to ensure adequate implementation and enforcement of arms export controls;

(d) to assist countries in the elaboration of national reports on arms exports and the promotion of other forms of scrutiny in order to promote transparency and accountability of arms exports;

(e) to encourage third countries to support the United Nations process aiming at the adoption of a legally binding international treaty establishing common standards for the global trade in conventional arms, and to assist in ensuring that they are in a position to comply with such possible common standards.

II. **Projects**

Purpose:

To provide technical assistance to interested third countries which have demonstrated a willingness to improve their standards and practices in the field of the control of exports of military equipment, and to align their standards and practices on those agreed and applied by European Union Member States, and laid down in the EU Code of Conduct of Arms Exports, and the accompanying User's Guide.

Descriptions and cost estimates:

(i) Workshops with groups of countries

The project will take the form of 4 two-day workshops to which government and licensing officials from the selected group of countries will be invited. The workshops will preferably take place in one of the target countries and training in relevant areas will be imparted by experts from EU Member States' national administrations, and the EU Council Secretariat and/or the private sector (including NGOs).

(ii) Workshops with individual countries

The project will take the form of 2 two-day workshops with individual target countries to which government and licensing officials from the target country will be invited. The workshops will preferably take place in the target countries and training in relevant areas will be imparted by experts from EU Member States' national administrations, the EU Council Secretariat and/or the private sector (including NGOs).

III. **Duration**

The total estimated duration of the implementation of the projects will be 24 months.

IV. **Beneficiaries**

Groups of beneficiary countries:

(i) The Western Balkan countries (2 two-day workshops, one in first semester of 2008 and one in first semester of 2009):

— Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro, Serbia

(ii) The North African Mediterranean partners of the European Neighbourhood Policy (1 two-day workshop in second semester of 2008):

— Algeria, Egypt, Libya, Morocco and Tunisia

(iii) The Eastern European and Caucasian partners of the European Neighbourhood Policy (1 two-day workshop in second semester of 2009):

— Armenia, Azerbaijan, Belarus, Georgia and Moldova

Individual beneficiary countries as follows (1 two-day workshop in the first semester of 2008 and one in first semester of 2009):

— Turkey, Ukraine

(Should any of the above countries not wish to take part in the workshop, additional countries will be selected [1] from the following additional partners of the European Neighbourhood Policy: Israel, Jordan, Lebanon, the Palestinian Authority, Syria.)

V. **Financial arrangements**

The projects will be financed in their entirety by this Joint Action.

Estimated required total financial means: the total costs of the project as described in this Joint Action is EUR 500 500.

[1] To be agreed upon by the competent decision-making instances of the Council on a proposal from the Presidency, assisted by the SG/HR. The Commission shall be fully associated.