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Price: EUR 4

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(<sup>1</sup>) Text with EEA relevance

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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<sup>(1)</sup> Text with EEA relevance

## II

(Non-legislative acts)

## REGULATIONS

## COUNCIL IMPLEMENTING REGULATION (EU) No 510/2010

of 14 June 2010

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cargo scanning systems originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal submitted by the European Commission ('the Commission') after having consulted the Advisory Committee,

Whereas:

## 1. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EU) No 1242/2009<sup>(3)</sup> ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain cargo scanning systems originating in the People's Republic of China ('PRC').
- (2) The proceeding was initiated as a result of a complaint lodged on 2 February 2009 by Smiths Detection Group Limited ('the complainant') on behalf of a producer representing more than 80 % of the total Union production of

certain cargo scanning systems. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

## 2. SUBSEQUENT PROCEDURE

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted the opportunity to be heard.
- (4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission continued its investigation with respect to EU consumption aspects. In this respect, the Commission contacted interested parties, notably users as well as producers of the product concerned, with a view to verify claims made by the parties with respect to a series of transactions.
- (5) It is recalled that, as set out in recital (9) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2007 to 31 December 2008 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2004 to the end of the investigation period ('period considered').
- (6) The sole cooperating Chinese exporting producer (the 'Chinese producer') argued that there is no justification for the use of an IP of 18 months instead of the 12 months normally used in anti-dumping investigations. According to the Chinese producer, the IP should have simply covered the 2008 calendar year.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.<sup>(2)</sup> OJ L 56, 6.3.1996, p. 1.<sup>(3)</sup> OJ L 332, 17.12.2009, p. 60.

- (7) At the outset it should be noted that the Chinese producer had not disputed the use of an IP of 18 months during the provisional stage of the investigation. The claim was only made after the adoption of provisional measures. However, the IP was already announced in the notice of initiation of the proceeding and in the questionnaires, i.e. at the very beginning of the investigation. The specific reasons for selecting an IP of 18 months have been explained in recital (9) of the provisional Regulation. The party did not provide any arguments that put into question the justification concerning the existence of relatively few transactions in this market.
- (8) In order to ensure full comparability of the figures relating to the IP with those relating to previous years, any figures given in the parts on injury and causation given for the IP have been annualised.
- (9) The Chinese producer also claimed that the selection of the IP was made in order to manipulate injury factors. The allegation has to be rejected.
- (10) The Commission was not and could not have been aware at the starting point of the investigation of the complex set of data and figures related to injury indicators at the beginning of the investigation. These data were only established in the course of the investigation.
- (11) It should finally be noted that it is not the first time that an IP is set for a period longer than 12 months (e.g. the 16 months IP on calcium metal originating in the PRC and Russia set by Commission Regulation (EC) No 892/94 <sup>(1)</sup> or the 18 month IP on disodium carbonate originating in the USA set by Commission Regulation (EC) No 823/95 <sup>(2)</sup>).
- (12) The Chinese producer also submitted that the signature of the contract captures all transactions at a certain point in time regardless as to whether a sale is made through a tendering process and thus there is no need for an extended IP. This argument is not convincing because it does not address the basic problem of the relatively few number of transactions in this market. The date of signature of the contract was used only in order to have sufficiently clear knowledge of the material elements of the sales as well as to have a well defined date in order to distinguish what should be part of the IP and the preceding periods respectively and what should be left out.
- (13) In the absence of any other comments concerning the IP, recital (9) of the provisional Regulation is hereby confirmed.
- (14) 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 certain cargo systems originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period of time within which they could make representations subsequent to this disclosure.
- (15) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

### 3. PRODUCT CONCERNED AND LIKE PRODUCT

- (16) Following provisional measures, the product definition was revisited in light of the comments by the Chinese producer and a detailed examination of the claims made by the Union industry. This process has led to the conclusion that no alpha or beta technology product can be used for cargo scanning. Therefore, it is considered warranted to exclude these two types of technologies from the product scope. No other representation was submitted that could put into doubt the provisional findings that all the remaining technologies (apart from alpha and beta) covered by the product scope can be used in cargo scanners and all product types serve the same purpose, namely to scan cargo by using the same main principal feature, i.e. the emission of radiation concentrated in scanning cargo. Indeed, during the IP, gamma-based units of the product concerned were sold in the EU.
- (17) In view of the above, it is concluded that all types of systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 share the same basic physical and technical characteristics, have the same basic end-uses and compete with one another on the Union market. On this basis, the conclusions in recitals (10) to (15) of the provisional Regulation are hereby confirmed to the extent they do not refer to alpha and beta radiation technologies.
- (18) In the absence of any other comments concerning the like product, recital (16) of the provisional Regulation is hereby confirmed.
- (19) In view of the above, it is definitively concluded that all types of cargo scanning systems as defined above are alike within the meaning of Article 1(4) of the basic Regulation.

<sup>(1)</sup> OJ L 104, 23.4.1994, p. 5.

<sup>(2)</sup> OJ L 83, 13.4.1995, p. 8.

#### 4. DUMPING

##### 1. Market economy treatment (MET)

(20) The Chinese producer did not claim market economy treatment ('MET') and only requested individual treatment ('IT'). In the absence of any comments, recitals (19) and (20) of the provisional Regulation are hereby confirmed.

##### 2. Individual treatment (IT)

(21) In the absence of any comments on IT, recitals (21) to (25) of the provisional Regulation are hereby confirmed.

##### 3. Normal value

###### 3.1. Analogue country

(22) No party disputed the selection of the United States of America (USA) as an analogue country.

(23) The Chinese producer reiterated its comments on the non-cooperation of one company, established in the United States of America ('US'), related to the complainant. It argued that the complainant used data relating to its related company in the US to compute the normal value in the complaint, whereas during the investigation the complainant submitted that its related US company was not a producer of the like product. The Chinese exporting producer submitted that the US related party of the complainant should have been obliged to cooperate with the investigation and failure to do so should be considered as a reason to treat the complainant as non-cooperator and thus terminate the proceeding. It was also argued that the Commission should have clarified and verified whether the US company is a producer of the like product. Finally, the Chinese exporting producer disputed the use of the EU's non preferential rules of origin as an indicator of whether an economic operator could be considered as a producer of a product.

(24) With respect to the comments relating to the use in the complaint of data derived from the complainant's related US company, it is noted that information on normal value in the complaint was based on general US prices which were publicly available on the US Government's GSA Advantages website. For two product types of the like product there were no such publicly available prices and the normal value had therefore to be constructed by the complainant on the basis of information from its production costs in the EU adjusted to a US level based on the complainant's knowledge of the US market.

(25) Furthermore, the Chinese producer did not provide any evidence that could put into question the findings stated in recital (32) of the provisional Regulation.

(26) EU anti-dumping law does not, in any event, contain a rule that a proceeding should be terminated because a producer in the analogue country has decided not to cooperate in the investigation. The fact that the producer is related to the complainant does not alter this conclusion. Moreover, the court case relied on by the Chinese producer, i.e. T-249/06 (Interpipe), is irrelevant in this context because in that case, the question at issue was to what extent a subsidiary of the Community producer was obliged to cooperate for the purposes of the injury determination. This is different to the submission of data in order to establish normal value in the analogue country.

(27) With respect to the argument put forward on the definition of the concept of a producer, it is noted that the investigation has established that the complainant is producing the like product in the EU and this manufacturing activity confers origin in line with the EU non-preferential rules of origin. No need exists by law to provide any conclusion with respect to the status of legal entities that are not under investigation in the current proceeding, are not established in the EU or the data of which was not used during the investigation for the establishment of any finding.

(28) In the absence of any other comments concerning the selection of the analogue country, recitals (26) to (37) of the provisional Regulation are hereby confirmed.

###### 3.2. Determination of normal value

(29) It is recalled that the normal value was calculated on the basis of the data provided by the sole cooperating producer in the analogue country (i.e. United States of America) and the Union industry. Thus, for one product type imported in the EU, normal value was established on the basis of prices of domestic sales of the US producer of the like product produced in the US. The cooperating US producer did not produce any other product types which could be compared to the product types imported from China into the EU. In order to have a broader basis for normal value, the Commission also examined whether for other product types normal value could be established on any other basis, in line with the provisions of Article 2(7)(a) of the basic Regulation ('any other reasonable basis'). At the provisional stage, it was found that verified information on costs of the Union industry could be used for some product types.

(30) Following the imposition of provisional measures, the Chinese producer submitted comments with regard to the normal value.

- (31) The Chinese producer claimed that the normal value should be adjusted downwards by an amount representing the cost difference between self-produced and externally purchased accelerators, since the Chinese company produces accelerators while the US producer and the Union industry purchases them.
- (32) As regards this claim, it should be noted that it was not accompanied by any factual evidence, despite the fact that the Commission requested such evidence in the course of the investigation.
- (33) The Chinese producer requested the Commission to provide the exact specification of the specific model types used for the normal value calculation. In this respect it is noted that the Union industry and the analogue country producer consider this type of information as confidential. Indeed, if one disclosed the exact name of models, account taken of the fact that the models belonged only to one series and that the specific features of this series were already disclosed, and that only a limited number of model types were used for the purpose of normal value calculations, then parties receiving such disclosure would be able to derive the actual prices charged for the specific model types or the cost and prices on the basis of which normal value was constructed for various model types. Such information is indeed confidential by nature and therefore this request had to be rejected.
- (34) The Chinese producer expressed doubts on the way the Commission determined the normal value derived from Union industry data. It submitted that actual sales prices should be used rather than price offers for tenders. Firstly, it is pertinent to recall that data from the Union industry were used in order to have a higher percentage of representativity of the comparison between normal value and the export sales made by the Chinese producer. Therefore, to the extent possible, for the types of product concerned for which no normal value could be established on the basis of information available in the US, normal value was established on the basis of verified information from the Union industry for the same types of products that were imported from China.
- (35) Thus, normal value was constructed for a number of product types (in any event other than mobile scanning systems) on the basis of standard costs, without taking into consideration any civil works or other on-site costs, and by adding a normal percentage for profit which was in any event significantly lower than the target profit used for the determination of the injury margin. The investigation established that the Union industry applies standard costs for all types of products it offers. The records concerning the preparation of these standard costs, the way they are calculated and their comparison to the real cost in standard costing were verified and found to be in order.
- (36) Furthermore, the cost structure of the Union industry was compared with the cost structure of the US producer of the like product. It was found that (i) the profit margin of the US producer was higher than the profit margin used to construct normal value on the basis of data from the Union industry and (ii) the cost structure of the Union industry is broadly similar to the one of the analogue country producer (the exact difference cannot be disclosed for reasons of confidentiality). Thus, the use of Union industry data to determine normal value is clearly in line with the provisions of Article 2(7)(a) of the basic Regulation.
- (37) The Chinese producer also commented on the public tender on the basis of which the US producer of the like product sold mobile cargo scanning systems on the US market. It claimed that if the Commission used a normal value on the basis of a tender that took place in 2005 and compared it with the export price relating to the IP, then such comparison could not be considered to be fair. This allegation is not borne out by the facts established in the investigation. In the US, public tenders are organised to award a framework contract under which the winner of the tender can sell for a certain period of time. The framework contract did not, however, contain any prices. Such contract was indeed concluded in 2005, but the respective individual quotes for tender and signing of contracts took place in 2007, i.e. already within the IP. Therefore the Commission was satisfied that this tender should be taken into account in the IP and form part of the data for calculating the dumping margin.
- (38) The Chinese producer also requested clarification as to why the normal value for the relocatable system, like the one it sold in Latvia, was not derived from the US producer's sales but rather from Union industry data. To this respect it is noted that the Commission could not use data in the analogue country because such data had not been available from the cooperating analogue country producer.
- (39) In the absence of any other comments, recitals (38) to (42) of the provisional Regulation are hereby confirmed.
- 4. Export price**
- (40) Following the imposition of provisional measures, the Chinese producer submitted comments concerning the export price.

(41) These comments were made in relation to transactions in the Netherlands, Finland and Poland with respect to specific cost items. The comments which could be corroborated with verified data were accepted and the calculation of the dumping margin was revised accordingly. Comments referring to some installation costs had to be rejected. In this respect it is recalled that, although relevant actual data on the price of different elements of the product concerned was requested at various stages of the investigation, the company never made any attempt to provide any proposal for a conclusive break-down. The amounts provided subsequent to the disclosure of the provisional findings constitute new information, unsupported by accounting information or other evidence that could be verified.

(42) The Chinese producer also clarified that it made one sale outside public tenders. This representation is confirmed. Nevertheless, the investigation established that this sale was not a sale that occurred in the normal course of business. It was in fact a replacement product and the price to which it refers was agreed a number of years before the IP. The replacement product was of a completely different type as the original product. Therefore, this was not a transaction falling in the IP but a settlement of a contract concluded previously. Thus, the export price relating to this transaction could not be retained in the calculation.

(43) In the absence of any other comments, recitals (43) to (46) of the provisional Regulation are hereby confirmed.

## 5. Comparison

(44) The Chinese producer claimed that the comparison was made on the basis of truncated product control numbers that ignore the physical differences between the products to be compared. Moreover, the Chinese company submitted that accelerators, differences in types of chassis and energy levels should have been taken into consideration on price comparison.

(45) As regards the first claim the following points should be highlighted: with respect to data derived from the Union industry, it is recalled that calculations were made with data directly linked to respective bids in public tenders, i.e. for product types that competed at the same level of trade at the same time and that were considered by the tendering authorities as being comparable. As to data derived from the US producer of the like product, the investigation established that the product type compared fulfilled the strict rules set out under Article 1(4) of the basic Regulation, i.e. it is a product alike in all respects to the product under consideration. Therefore, the fact that not all physical differences are reflected in a product control number or a truncated product control number

does not prevent the Commission from making a fair comparison between normal value and export price. More importantly, differences that could affect price comparability were looked at. The information on file indicates that products delivered by the cooperating Chinese exporting producer often contain additional features as compared to those used as a basis for normal value. As a result, the normal value has been established conservatively.

(46) With respect to the accelerators, types of chassis and energy levels, it should be noted that the requested adjustments fall under Article 2(10) of the basic Regulation but the differences in factors claimed have not been demonstrated to affect price and price comparability since no information was provided by the Chinese producer that could warrant an adjustment.

(47) The Chinese producer submitted that the accelerator is an important component of the product concerned and should have been included in the product control number structure. The Commission did not include the accelerator in the product control number structure as none of the parties concerned presented any evidence that pointed to the fact that the accelerator was a factor distinguishing the different product types.

(48) The Chinese producer also requested identification and quantification of the adjustments made to the normal value in order to bring it back to an ex-works basis. Adjustments for warranty and credit costs were made to the normal value determined on the basis of the domestic sales prices of the sole US producer of the like product. Adjustments for transport costs, warranty costs, training costs, documentation costs and agent fees were made to the normal value determined on the basis of data of the Union industry. Concerning the request for quantification of these adjustments, the Commission is not able to disclose such data as this information is considered confidential by nature. It must be noted that, similarly, when calculating the ex-works export price, the corresponding data was not disclosed to the Union industry.

(49) In the absence of any other comments, recitals (47) and (48) of the provisional Regulation are hereby confirmed.

## 6. Dumping margins

(50) The Chinese producer criticised the fact that some sales were excluded from the dumping calculation. In this respect it is noted that the sales values of the transactions in question were originally considered for the establishment of the export prices. However, the normal value for these transactions could not be established. Thus, no comparison could be made between normal value and export price.

- (51) The Chinese producer also claimed that the CIF values of the sales mentioned in recital (50) should have been included in the total CIF value which served as a denominator for the dumping calculations. This claim cannot be accepted. The calculation of a total dumping is the result of the division of the sum of the different dumping found (where a price comparison can be made) with the sum of the corresponding CIF values. The inclusion in the calculations of the CIF values of sales for which no comparison between normal value and export price could be made due to a lack of an established normal value, would cause an arithmetical flaw in these calculations as the nominator and the denominator would no longer refer to comparable transactions.
- (52) In the absence of any other comments, recitals (49) and (50) of the provisional Regulation are hereby confirmed.
- (53) Taking into account the above, the definitive dumping margin, expressed as a percentage of the CIF Union frontier price duty unpaid, is 38,8 %.

## 5. INJURY

- (54) Comments on the findings concerning injury were received only from the Chinese producer, some of which were a mere repetition of comments already addressed in the provisional Regulation.
- (55) Arguments concerning comments already addressed in the provisional Regulation are not repeated in this Regulation.

### 1. General remarks

- (56) It is recalled that in this case the information presented refers to two Union producers and one exporting producer which represent essentially the Union market. Account taken of the above, no precise figures can be given in order to protect business proprietary information. Thus, indicators are given in indexed form or ranges.
- (57) In its reply to the provisional disclosure, the Chinese producer requested that the injury analysis be presented on an annualised basis. Although this does not alter the substance of the data, but only its presentation, the claim was considered warranted and thus the analysis presented hereunder is annualised throughout.
- (58) The Chinese producer disputed the data provided in the company specific provisional disclosure document on its sales volume for the period considered (from 2004 up to the end of the IP). It is noted that the Commission provided an exhaustive and complete break down to the Chinese producer of the compiled data. Feed-back received by the Chinese producer was consequently

cross checked with the available information provided by the authorities of Member States as users of the product concerned and the producers in the Union. Therefore, at the definitive stage of the investigation the details concerning the Chinese sales to the Union and its respective impact were known.

- (59) The Chinese producer argued that where there is no bid from the Union industry, its sales should be excluded from the injury and causation analysis. However it should be noted that the institutions cannot claim that the fact that, during the IP the Union industry did not bid in a specific tender but the Chinese exporting producer did, entailed a self-inflicted injury to such an extent that broke the causal link between injury and dumping. Moreover, to participate in a tender does not come without a cost (translations, agent, sometimes paying for the tendering, etc.) so companies do not bid if they are not sure that they have a chance.
- (60) It was also claimed that where the complainant (Smiths Detection Group Limited) made offers exceeding the price ceiling specified in tenders, it should be excluded from the injury and causation analysis. Nevertheless, the investigation has not brought to light any verifiable information confirming that such offers existed.
- (61) The Chinese producer submitted that there is an asymmetry of the injury data. This is because sales volumes, market share and profit refer to sales by contract date while certain other injury factors were derived from the financial accounting of the complainant and therefore may not correspond in time. At the beginning of this investigation, the Commission services had to set a clear-cut reference point for sales which would be applicable to all companies cooperating with the proceeding. It was decided that the contract date provided the best reference point because there is often a large time gap between tender initiation dates and the contract date, as well as between the contract date and the final invoice date. In addition, several invoices often cover a contract and a contract can cover several years.
- (62) Having set the contract date as the reference point, it was not practicable to ask the Union producers to compile their entire questionnaire response on the basis of contract dates. To do so would have meant that they should have had to completely rework their accounting in a manner which is not normal practice and which would have introduced numerous ambiguities with the consequent negative impact on the quality of such information. Bearing in mind that it was not viable to use invoice dates as the reference point, the injury data was supplied in this case in the best manner possible for this product.



- (63) In the course of month ten of the investigation i.e. in its provisional disclosure response, the Chinese producer also disputed the fact that the IP covered an 18-month period, stating that it should have been limited to the calendar year of 2008. This claim had to be rejected because of the reasons supporting an 18-month period as set out in the provisional Regulation and in recitals (5) to (11). Moreover, such change would have prevented the timely conclusion of the investigation because it would have meant asking all cooperating companies to re-submit their questionnaire responses on the basis of a revised IP.
- (64) The Chinese producer also cast doubts as to whether the many EU companies related to the complainant were properly included in the Commission's injury analysis. However the verification of the complainant's questionnaire response was carried out with full cooperation of the entire group and the Commission was satisfied that the injury indicators and calculations were analysed properly for the entire group. As was clarified to the Chinese producer before the adoption of the provisional measures, the EU companies to which it refers play an insignificant role, if any, in the manufacturing and marketing of the relevant product. In fact, their role is limited to some functions referring to the sale of the product under investigation (e.g. servicing) and of products not falling within the scope of this Regulation.
- (65) The Chinese producer finally claimed that, insofar as the Union industry could not meet the technical requirements of certain tenders or did not participate at all in the tenders, no dumping causing injury to the EU industry occurred for these transactions. This claim could not be accepted.
- (66) Firstly, it is noted that the fact that no normal value can be established for some export transactions does not put into question the finding of injurious dumping, as long as the basis for the calculation is considered as representative. This was certainly the case here (see recital (50)). For the specific transactions in question the following should be noted. The transaction referring to technical requirement problems concerns one product type sold on the basis of one tender. The Chinese producer, on the one hand, and the two Union producers on the other interpreted the tender quite differently. The Chinese producer claimed towards the end of the investigation that the product type in question was quite different from a mobile scanner while the Union industry was of a different opinion. It is therefore clear that Union industry participated in this tender with the fair belief that it should offer a specific product type. More importantly, its participation entailed costs (translations,

agent, paying for the tendering etc.). Thus, the fact that the final conclusion of the tendering process was that the Union industry did not present a bid on the same terms does not imply that such imports have automatically not contributed to injury.

- (67) As regards the remaining transactions the Chinese producer refers to a transaction not falling in the IP, which as explained in recital (42), is in fact a settlement of a contract concluded previously. It also referred to a transaction in which the Union industry did not participate to the tender. With respect to the former transaction, no finding with respect to injury was made. With respect to the latter transaction, the conclusions of recital (59) apply.

## 2. Union production and Union industry

- (68) In the course of month eleven of the investigation, a Romanian company came forward with the claim that it was an EU producer of certain cargo scanning systems during the IP. The Commission sought and verified information concerning the actual status of this company. According to information submitted both by the company and by other actors in this market, including the Chinese producer, this company's involvement in the like product is closely linked to the production activities of a well-established Union producer of cargo scanning systems. Consequently, in the context of the current investigation, the only sale made by the Romanian company during the IP is considered to have been made by the Union producer of cargo scanning systems it has worked with.
- (69) As regards macroeconomic indicators such as consumption, production, capacity utilisation, stocks, sales volume, market share, employment, productivity and wages, as well as export sales, it should be noted that they have been analysed with respect to all Union producers.

- (70) In the absence of any other comments, the findings set out in recitals (52) to (56) of the provisional Regulation are hereby confirmed.

## 3. Union consumption

- (71) The Chinese producer argued that the level of the Union consumption as set out in the provisional Regulation was not accurate. In this respect, the Commission contacted interested parties, notably users, with a view to collect further information on EU consumption during the period considered. On the basis of additional input provided by parties, it is considered that the EU consumption developed as follows:

	2004	2005	2006	2007	IP
Index: 2004 = 100	100	62	114	110	111

Source: Questionnaire replies and subsequent submissions.

- (72) The consumption of the product concerned and the like product in the EU increased by 11 % during the period considered.
- (73) The Chinese producer claimed that actual consumption data should be disclosed rather than indexed information. In this regard it is noted that, as has already been clearly explained in recital (54) of the provisional Regulation, there are a very limited number of parties involved in the production of certain cargo scanning systems in the EU and any disclosure of actual consumption data would lead to disclosure of actual sales of parties which is considered information that is confidential by nature.
- (74) It was also submitted that consumption should take into account all units of the product concerned consumed on the EU market. In this regard it is noted that Union consumption figures take into consideration all sales of the product under investigation (whether they result from a tendering process or not) of all parties (to the extent known by the Commission). Data was cross checked and verified to the various sources available. However, the consumption figures only comprise actual sales and not the small number of transactions reported to the Commission which were either leased or donated. Had these transactions been included, the Chinese market share would have been even higher.
- (75) In the absence of any other comments, recitals (57) and (58) of the provisional Regulation, as modified in recitals (71) to (74) above, are hereby confirmed.

#### 4. Imports from the country concerned

##### (a) Volume, price and market share of dumped imports of the product concerned

- (76) As explained in recitals (57) and (58), volumes and market share of dumped imports of the product concerned were revised. The annualisation of data and update of volumes confirmed the conclusions in the provisional Regulation that imports and their market share have increased significantly since 2004. The Chinese party questioned the methodology employed to index this data. It is important to highlight that the actual data used, however indexed, at both the provisional and definitive stages, shows a significant increase of volume and market share of imports from the country concerned.
- (77) The volume of imports of the product concerned increased by more than 150 % during the period considered.

	2004	2005	2006	2007	IP
Volume of imports	100	75	250	200	267

Index: 2004 = 100

Source: Questionnaire replies and subsequent submissions.

- (78) As stated in recital 60 of the provisional Regulation, the average export price varied enormously according to the types of cargo scanner imported and no meaningful conclusions could be derived from this.

- (79) The market share of the imports from the country concerned more than doubled in the period considered.

	2004	2005	2006	2007	IP
PRC market share	15-25 %	20-30 %	40-50 %	30-40 %	40-50 %
Index: 2004 = 100	100	121	219	183	240

Source: Questionnaire replies and subsequent submissions.

- (80) The Chinese producer argued that post-IP volumes (in the form of tenders won during the IP that led to the signing of contracts after the IP) should also be examined. In accordance with the provisions of the basic Regulation, post-IP events are not taken into account, except in exceptional circumstances. The Chinese producer did not invoke such exceptional circumstances. Moreover, for reasons of comparability, it would have been necessary to also reallocate the sales in periods preceding the IP. The claim was therefore not accepted. Bearing in mind the increases of imports in terms of volume and market share shown above, this decision had in any event no impact on the factors examined in this case.

(b) *Undercutting*

- (81) The Chinese producer submitted that the undercutting methodology used at the provisional stage was flawed. In its view, it was not possible to compare its actual sales prices with the tender prices offered by the Union industry. In this respect it is noted that this methodology was considered to be the most appropriate because of the need for a fair comparison involving a product which is very complex in nature and involved in public procurement. No other viable methods were identified by the interested parties.
- (82) It should be stated that although the methodology remained the same as described above, minor adjustments were made to the calculation which reduced the Union industry's prices and these were disclosed to the interested parties.
- (83) The revised comparison shows that, during the IP, imports of the product concerned were sold in the Union at prices which undercut the Union industry's prices by a range of 15 to 20 %. It should be noted that the Chinese producer claimed in its submissions that one of the reasons why it won contracts was because it offered a superior product specification. In terms of undercutting (and underselling) this could have led to adjustments being made and higher injury margins being calculated. No such adjustment was made because this was not proven to be valid and there was no information to quantify them.
- (84) In the absence of any other comments, the rest of the information in recitals (59) to (62) of the provisional Regulation, as modified in recitals (76) to (83) above, is hereby confirmed.

## 5. Situation of the Union industry

### Preliminary remarks

- (85) It should be noted that the data for the injury indicators are presented differently in the definitive Regulation to take account of two issues, as stated in recitals (57) and (69), namely the request of the Chinese producer to annualise data for the 18 months IP and the compilation in the analysis of the macro indicators of data derived from the second Union producer.

**Injury indicators***Production, capacity and capacity utilisation*

	2004	2005	2006	2007	IP
Production	100	75	94	173	151
Capacity	100	83	90	185	200
Capacity utilisation	100	90	104	94	76

*Index: 2004 = 100*

*Source: Questionnaire replies.*

- (86) During the period considered, the Union industry's production volume increased by 51 %. This positive trend is mainly due to the good export sales of the like product. The Union industry doubled its production capacity over the period considered for the same reason. Capacity utilisation of the Union industry went down by 24 % during the period considered.
- (87) Bearing in mind that the above figures relate to production, an important part of which is sold on markets outside the EU, it is not considered that these are important indicators in this case.

*Stocks*

	2004	2005	2006	2007	IP
Stocks	100	164	155	127	136

*Index: 2004 = 100*

*Source: Questionnaire replies.*

- (88) The Union industry's stock level showed an upward and fluctuating trend during the period considered. However, this was not considered to be an important indicator because this industry operates on a production to order basis, stocks are always kept to a very low level and an important part of these stocks was earmarked for the export market.

*Sales volume, sales price and market share*

	2004	2005	2006	2007	IP
Union sales volume	100	67	93	100	76
Market share	65-75 %	70-80 %	55-65 %	60-70 %	45-55 %
Index of market share	100	108	82	91	68

*Index: 2004 = 100*

*Source: Questionnaire replies and subsequent submissions.*

- (89) Sales of the Union industry decreased during the period considered and in the IP were almost 25 % less than their original volume. The Union industry lost around 20 percentage points of its market share between 2004 and the end of the IP.
- (90) The findings as to sales prices in recital (69) of the provisional Regulation are confirmed.

- (91) The Chinese producer reiterated its request to receive information on public tenders awarded to the complainant and on the extent to which certain tenders were taken into account in the framework of this investigation. However, to give such level of detail was not deemed appropriate for reasons of confidentiality. It also sought further confirmation that the date of signature of sales contracts of tendering proceedings was used as the determining factor to calculate Union consumption. In this respect, the institutions confirm that the methodology explained in recital (57) of the provisional Regulation was used for all parties. The same party also sought clarification that the data of the complainant referred to both of its production sites. In this respect, as stated in recital (7)(a) of the provisional Regulation, it is confirmed that the data reported by the complainant was compiled from both of its production sites.

*Profitability*

	2004	2005	2006	2007	IP
Pre-tax profit margin	100	85	90	7	- 50

*Index: 2004 = 100*

*Source: Questionnaire replies.*

- (92) The Union industry became loss-making during the period considered. The situation was particularly bad during the IP.

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

	2004	2005	2006	2007	IP
Investments	100	164	100	354	105
Return on investment	110-120 %	85-95 %	210-220 %	215-225 %	60-70 %
Cash flow	100	124	257	186	- 71

*Index: 2004 = 100*

*Source: Questionnaire replies.*

- (93) Investments remained low during the period considered. A major part of the investments was devoted to maintaining the Union industry's operating premises. The higher level of investment observed in 2007 concerns a new patent to improve the performance of the product concerned. It is recalled that this business is know-how intensive and not investment intensive.
- (94) The return on investment, expressed in terms of net profits of the Union industry and the net book value of its investments, shows a drop during the period considered, but is not a good injury indicator because it mainly reflects assets that had already been depreciated.
- (95) The cash flow situation of the Union industry deteriorated severely over the period considered.
- (96) Bearing in mind that the production of cargo scanning systems constituted a small part of the complainant's activity, the ability to raise capital was not considered to be an important indicator in this case.

*Employment, productivity and wages*

	2004	2005	2006	2007	IP
Employment	100	110	129	160	167
Average labour cost per worker	100	98	102	106	106
Productivity per worker	100	68	73	109	135

*Index: 2004 = 100*

*Source: Questionnaire replies.*

- (97) The employment, average labour cost per worker and productivity per worker increased during the period considered. However, these indicators are not considered to be important indicators in this case because much of the employment relates to production of certain cargo scanning systems sold on the export market.

**Magnitude of dumping**

- (98) The findings of recital (76) of the provisional Regulation are confirmed.

**Other comments**

- (99) In the absence of any other comments, the rest of the information in recitals (64) to (76) of the provisional Regulation, as modified in recitals (85) to (98) above, is hereby confirmed.

**6. Conclusion on injury**

- (100) The findings contained in the provisional Regulation regarding the varying degrees of importance of the injury indicators in this particular proceeding remain valid. The most important injury factors are considered to be profitability, market share and undercutting because they reflect directly the fortunes of the Union industry in relation to its activity on the Union market. The reasons why certain other indicators are not as relevant are explained above.
- (101) As regards profitability, the Union industry has become loss making over the period considered and the market share of the Union producers has fallen by 24 %. Furthermore, the Chinese producer undercut the complainant by a range of 15 to 20 %.
- (102) Indeed, the Chinese market share of the product concerned in the Union increased by 140 % during the period considered while at the same time Union industry showed a significant decrease in sales volume (- 24 %) and market share (20 percentage points).
- (103) As explained in the general remarks preceding this injury analysis, the data has been presented in a different way to the provisional Regulation. Clearly, whether the data is shown in an annualised format or not, does not change the substance of the data but only its presentation. However, the injury data presented above in respect of the macro indicators) also includes data of the second Union producer. It is thus concluded that the revised data shown above confirms the provisional injury conclusions, i.e. that an injurious situation existed during the period considered within the meaning of Article 3(5) of the basic Regulation.

- (104) Account taken of the above, it is considered that the conclusions regarding the material injury suffered by the Union industry as set out in the provisional Regulation are not altered due to the change of presentation referred to in recital (85). In the absence of any other comments in this respect, recitals (77) to (80) of the provisional Regulation, as modified in recitals (100) to (103) above, are hereby confirmed.

## 6. CAUSATION

- (105) Comments on the findings concerning causation were received only from the Chinese producer.
- (106) It is recalled that the effects of dumped imports and other factors have been annualised for the reasons explained in recital (85).

### 1. Effects of the dumped imports

- (107) The market share of the dumped imports increased by 140 % during the period considered, whilst the Union's industry market share decreased by 32 %. These negative changes for the Union industry occurred against the backdrop of the EU consumption that increased by 11 % between 2004 and the IP (annualised figure).

### 2. Effects of other factors

#### Export performance of the Union industry

	2004	2005	2006	2007	IP
Export sales of Union production	100	93	123	245	233
Export sales price	100	107	60	63	70

*Index: 2004 = 100*

*Source: Questionnaire replies.*

- (108) The export volume of the Union industry increased during the period considered. Exports represented the overwhelming majority (between 85 and 95 %) of the total volume of EU production in the IP.

finally confirmed the figures for the volume of imports from the US established at the provisional stage.

### Imports from third countries

- (109) The Chinese producer suggested that the Commission failed to analyse imports from the US and that more cargo scanners were sold to the EU by US companies than by the PRC during the IP, but this claim is not supported by actual facts and concrete verifiable evidence.

- (110) Following provisional measures, the Commission actively sought to have more information on US imports but it

### The Union industry did not present a bid for all tendering processes taking place during the IP

- (111) The Chinese producer criticised the consequences of the non-participation in some tenders of the Union industry. In this respect, we note that the investigation took stock of the fact that not all parties (the Union industry, the Chinese producer, other producers of certain cargo scanning systems) presented offers to each and every tendering process. No compelling factor was found to suggest that the clearly observed injury during the period considered results from the Union industry not participating in bids that were not deemed reasonable business options. The existence of a reasonable business option as a determining factor in participating to a bid is confirmed by the fact that participation in a tender entails costs (translations, agent, sometimes paying for the tendering etc.) and companies do not bid if they are not sure that they have a chance.

### **Impact of non-price related factors of the product concerned**

- (112) The Chinese producer insisted on claiming that the injurious effects of non-price related factors such as other technical factors should be further analysed under causation.
- (113) Indeed, the Union industry would have been technically able to match the same specifications as those of the Chinese product. However, this would have meant that the Union industry would have had to offer the product at a higher price. In fact, this issue reveals the full effect of the dumping of the Chinese producer. Part of the dumping is due to the fact that the Chinese producer simply offers a product with more features. Since Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts <sup>(1)</sup> allows the application of two award criteria only: 'the lowest price' and 'the most economically advantageous tender', the contract had to be quasi automatically awarded to the Chinese producer engaged in dumping. The offers made by the Chinese producer would have no longer been economically advantageous if they had not been dumped, i.e. if they had at least been higher in order to reflect the additional features.
- (114) It should finally be pointed out that the investigation showed that the complainant met all the technical specifications in tenders where both the complainant and the Chinese producer presented a bid on the same terms.

### **Allegation of higher prices than the complainant**

- (115) The Chinese producer also claimed that there were cases where tenders were awarded to the Chinese producer in spite of the fact that it offered a higher price than the complainant. Thus, such transactions should be deemed not to have caused injury.
- (116) In this respect, it should be noted that the investigation has established the existence of only one case of tendering process where at first sight it seems that the sole cooperating Chinese producer won a tender in spite of the fact that it offered a higher price than the complainant. However, the investigation revealed that in reality this was not the case because the offer made by the Chinese company included many additional features for the same price. If adjustments were to be made for all these additional features, the export price would have been lower entailing a higher dumping margin. No other verifiable information was presented to support the claim that other tenders existed where the Chinese company offered a higher price than the complainant.

### **Situation with respect to the other Union producer**

- (117) The Chinese producer submitted that the other Union producer engaged in predatory pricing thus causing material injury to the Union industry and that this party is not injured by imports from China because it has discontinued its active cooperation.
- (118) First of all, it is recalled that the other Union producer has provided information with respect to this proceeding and the injury analysis is assessed for the whole Union industry. Moreover, it is pertinent to note that the claims of the Chinese producer on predatory pricing are not supported by any factual evidence and cannot undermine the findings of the investigation as presented at recital (89) of the provisional Regulation.

### **3. Conclusion on causation**

- (119) In the absence of any other comments, recitals (81) to (95) of the provisional Regulation, as modified in recitals (105) to (118) above, are hereby confirmed.
- (120) In the light of the above, the provisional finding that the material injury to the Union industry was caused by the dumped imports is confirmed.

## **7. UNION INTEREST**

### **1. Interest of users**

- (121) Two users that had already sent representations at the provisional stage insisted on their initial comments. They highlighted their concerns about competition and technological developments, should definitive measures be imposed. Both concerns were, however, addressed in the provisional Regulation and nothing new was submitted that could confirm that competition and technological developments would be harmed, at least in the short- to medium-term, by the imposition of a definitive duty.

### **2. Conclusion on Union interest**

- (122) The two representations above have not altered the provisional conclusions. In the absence of any other comments, recitals (96) to (113) of the provisional Regulation are hereby confirmed.

## **8. DEFINITIVE ANTI-DUMPING MEASURES**

### **1. Injury elimination level**

- (123) The sole cooperating Chinese exporting producer made comments on the underselling calculation. Where warranted, adjustments were made at the definitive stage.

<sup>(1)</sup> OJ L 134, 30.4.2004, p. 114.



(124) The Chinese producer submitted a claim in relation to the injury margin that was similar to that set out in recital (51) of this Regulation. This claim had to be rejected for the same reasons as those stated in recital (51).

(125) The Chinese producer also sought clarifications on the method used to set the pre-tax profit margin and, in particular, to which year this profit margin refers. In this respect, it is noted that the pre-tax profit setting was the result of an analysis of data referring to the financial years 2006 and 2007.

(126) The calculations made on the definitive dumping margin and the definitive injury elimination level led to the latter being lower than the former. In the absence of any other comments, recitals (114) to (117) of the provisional Regulation, as modified in recitals (123) to (126) of this Regulation, are hereby confirmed.

## 2. Definitive measures

(127) In view of the conclusions reached with regard to dumping, injury, causation and Union 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. This was calculated at 34 % having fallen significantly since the provisional stage, when the duty rate was set at the level of the dumping found.

(128) On the basis of the above, the rate of the definitive anti-dumping duty for the PRC is 34 %.

(129) In line with recital (120) of the provisional Regulation, for reasons of careful monitoring of the effectiveness of the measures, the relevant authorities of Member States are requested to provide to the Commission on a confidential and periodic basis information concerning EU public procurement proceedings leading to sales of cargo scanning systems.

## 9. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(130) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Union 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 the duty definitively imposed by this Regulation. Since the definitive duty is lower than the provisional duty, the amounts secured in excess of the definitive duty rate shall be released,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A definitive anti-dumping duty is hereby imposed on systems for the scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 (TARIC codes 9022 19 00 10, 9022 29 00 10, 9027 80 17 10 and 9030 10 00 91) and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 (TARIC code 8705 90 90 10) originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 shall be 34 %.

3. 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 (EU) No 1242/2009 on imports of systems for the scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 (TARIC codes 9022 19 00 10, 9022 29 00 10, 9027 80 17 10 and 9030 10 00 91) and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 (TARIC code 8705 90 90 10) 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 rate of the definitive anti-dumping 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 Luxembourg, 14 June 2010.

*For the Council*  
*The President*  
C. ASHTON

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**COUNCIL IMPLEMENTING REGULATION (EU) No 511/2010**

**of 14 June 2010**

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain molybdenum wires originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the 'basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

**1. PROCEDURE**

**1.1. Provisional measures**

- (1) The Commission, by Regulation (EC) No 1247/2009<sup>(2)</sup> (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China ('PRC' or 'country concerned').
- (2) The proceeding was initiated following a complaint lodged by the European Association of Metals (EURO-METAUX) (the complainant) on behalf of a producer representing a major proportion, in this case more than 25 %, of the total Union production of molybdenum wires.
- (3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 April 2008 to 31 March 2009 ('investigation period' or 'IP'). The examination of the trends for the assessment of injury covered the period from March 2005 to the end of the IP ('period considered').

**1.2. Subsequent procedure**

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written

submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

- (5) 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 certain molybdenum wires originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.

**2. PRODUCT CONCERNED AND LIKE PRODUCT**

- (6) In the absence of any comments concerning the product concerned and the like product, recitals (14) to (17) of the provisional Regulation are hereby confirmed.

**3. DUMPING**

**3.1. Market Economy Treatment (MET) — Individual Treatment (IT)**

- (7) In the absence of any comments concerning the MET and IT findings, recitals (18) to (23) of the provisional Regulation are hereby confirmed.

**3.2. Normal value**

- (8) Following the disclosure of the provisional findings, the cooperating exporting producer contested the use of the export prices from the USA to other countries (including the Union) as a basis for the determination of the normal value for the PRC. Instead, it proposed to use the price actually paid or payable in the Union for the like product because it considered that normal value determined on this basis would yield a lower dumping margin for the PRC.

- (9) The same producer claimed that the normal value should be adjusted downwards in order to account for the efficiencies it enjoys as a vertically integrated producer in comparison with the complainant or the analogue country producer which do not have mining facilities for the main raw material, the molybdenum ore.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ L 336, 18.12.2009, p. 16.

(10) Regarding the first claim it is noted that the use of prices paid or payable in the Union is an option provided for in Article 2(7)(a) of the basic Regulation to be used only when the other options provided for in the same Article cannot be applied. Since in this proceeding cooperation was obtained from a third country producer, and it was thus possible to use the option of a price from the market economy third country to other countries, there is no legal justification to apply the residual option of Article 2(7)(a). The claim was therefore, rejected.

(11) Regarding the second claim it is noted that that the cooperating producer did not provide any evidence to demonstrate that the level of integration of producers is a factor that affects prices and price comparability. The claim was therefore rejected.

(12) Certain parties questioned the choice of the analogue country producer in view of the fact that this company in the USA is a daughter company of the complainant. In this regard it is noted that the fact that a company in the proposed analogue country is a related company of the complainant did not preclude that the information obtained was reliable and verifiable.

(13) In the absence of any other comments concerning the normal value, which would alter the provisional findings, recitals (24) to (25) of the provisional Regulation are hereby confirmed.

### 3.3. Export price

(14) In the absence of any comments concerning the export price, recital (26) of the provisional Regulation is hereby confirmed.

### 3.4. Comparison

(15) It is noted that the indirect taxation adjustment mentioned in recital (27) of the provisional Regulation is 5 % and represents the difference between the VAT payable on domestic sales and that payable on the export sales transactions due account being taken of the VAT refund rate on export sales. The cooperating exporting producer contested the manner in which this adjustment was applied and claimed that it should rather be calculated as a factor decreasing the export price.

(16) Regarding this claim it is noted that the adjustment was based on the provisions of Article 2(10)(b) of the basic Regulation which provides for an adjustment to normal value for import charges and indirect taxes — a category which includes VAT. On this basis the claim was rejected.

(17) In the absence of any other comments concerning the comparison, which would alter the provisional findings, recital (27) of the provisional Regulation is hereby confirmed.

### 3.5. Dumping margins

(18) Based on the above, the country-wide dumping established in recitals (28) to (29) of the provisional Regulation at 68,4 % is hereby confirmed.

## 4. INJURY

### 4.1. Union production

(19) It is recalled that in order to protect the business confidential information of the sole Union producer that fully cooperated, all the figures related to sensitive data provided below have been indexed or given in a range.

(20) In the absence of any comments concerning the Union production recitals (30) to (31) of the provisional Regulation are hereby confirmed.

### 4.2. Definition of the Union industry

(21) In the absence of any comments concerning the definition of the Union industry, recital (32) of the provisional Regulation is hereby confirmed.

(22) Regarding recital (33) of the provisional Regulation it is noted that on the basis of comments received by one interested party a clerical error was detected. The fiscal year ('FY') 2005 of the Union producer covers the period from 1 March 2005 to 28 February 2006 and not the period from 1 March 2004 to 28 February 2005 as indicated in that recital. Hence, the starting point of the injury assessment was effectively March 2005.

### 4.3. Union consumption

(23) It is recalled that the Union consumption was established by adding to the sales volume of the known producers in the Union all the imports from third countries extracted from Eurostat. It is also recalled that since the CN code under which the product concerned is declared also includes other products which fall outside the scope of this investigation and given that there are no specific import statistics available only for the product concerned, the Eurostat data was adjusted in accordance with the method suggested in the complaint. This methodology is based on a comparison of the import values from the PRC with the Union producer's sales values.

- (24) However, at provisional stage the import data used corresponded to the calendar years whereas the sales volume of the known producers were based on the fiscal years. One interested party contested this discrepancy in the period used for the determination of consumption and claimed that the imports should also be based on the fiscal years.
- (25) This claim was considered to be valid and, therefore, Eurostat data was adjusted to correspond to the same periods, namely fiscal years. As a result, the Union consumption figures provided in table 1 of the provisional Regulation were amended; the new figures being as provided in Table 1 herein:

Table 1

Union Consumption	2005	2006	2007	2008	IP
Tonnes	403	396	430	396	358
<i>Index 2005 = 100</i>	100	98	107	98	89

- (26) Overall, the Union consumption of molybdenum wires decreased by 11 % over the period considered. The demand decreased slightly by 2 % in 2006 and went up in 2007 by 9 % after which it dropped in 2008 and in the IP, in connection with the negative impact of the economic crisis.

#### 4.4. Imports into the European Union from the PRC

##### 4.4.1. Volumes and market share of the imports from the PRC

- (27) Following the acceptance of the argument mentioned in recital (25), the table below shows the revised total import volumes, market shares and prices of Chinese molybdenum wires into the Union market during the period considered. It is noted that this revision did not affect the import volumes from the country concerned in the IP.

Table 2

All imports from the PRC	2005	2006	2007	2008	IP
Tonnes	42	56	87	100	97
<i>Index 2005 = 100</i>	100	133	207	238	231
Market share	100	136	194	243	261
<i>Index 2005 = 100</i>					
Prices (EUR/tonne)	53 202	62 198	56 046	51 512	50 892
<i>Index</i>	100	117	105	97	96

Source: Eurostat and complaint data

- (28) The revised figures in Table 2 showed that overall the trends of import volumes and market shares from the country concerned presented in the table of recital (36) of the provisional Regulation remained unchanged. The dumped imports from the PRC increased significantly from 42 tonnes in 2005 to 100 tonnes in 2008, i.e. more than doubled. Following a peak in 2008, these imports decreased during the IP in line with the evolution of the Union consumption. Moreover, the market share of the dumped imports more than doubled over the period considered.
- (29) The revised figures concerning the average import prices, however, now show a declining trend between 2005 and the IP. It was found that over the period considered the average import prices from the PRC decreased by 4 %.

#### 4.4.2. Price undercutting

(30) In the absence of any comments concerning price undercutting, recitals (39) and (40) of the provisional Regulation are hereby confirmed.

(32) In the absence of any comments with regard to production, production capacity and capacity utilisation, the provisional conclusions as outlined in recitals (41) to (43) of the provisional Regulation are hereby confirmed.

#### 4.5. Economic situation of the Union industry

(31) It is recalled that, as mentioned in recital (41) of the provisional Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators for an assessment of the state of the Union industry from March 2005 to the end of the IP.

(33) Subsequent to the provisional Regulation and following the minor revision made to the Union consumption in Table 1, the market share of the Union industry has been revised as follows, while the sales volume and average sales prices remained unchanged:

Table 3

	2005	2006	2007	2008	IP
Sales volume in the Union market <i>Index</i>	100	99	92	75	68
Market share <i>Index</i>	100	101	86	76	77
Average sales prices <i>Index</i>	100	86	96	95	92

(34) As mentioned in recital (45) of the provisional Regulation, the sales volume of the Union industry to independent customers on the Union market decreased significantly by 32 % over the period considered. This decrease significantly exceeded the decrease in consumption which as shown in table 2 decreased by 11 % over the same period. This resulted in a significant drop of 23 % in the market share of the Union industry in the same period.

(38) It is recalled that the deterioration in the economic situation of the Union industry coincided with the surge of the dumped imports from the PRC. Subsequent to the provisional measures and following the revisions to the import figures originating from the PRC as provided in recital (25), the imported volume and the market share of the Chinese exporters more than doubled between 2005 and IP.

(35) In the absence of any comments with regard to the development of the sales prices, stocks, employment, the financial performance indicators of the Union industry, the provisional conclusions as outlined in recitals (46) to (57) of the provisional Regulation are hereby confirmed.

(39) As a result of the revisions the import prices of the dumped imports decreased over the period considered by 4 % while remaining constantly below the prices of the Union industry, undercutting them by 30 to 35 % during the IP. Consequently, the Union industry was facing price pressure by the Chinese exporters on a continued basis in order to remain competitive on the Union market.

(36) The conclusion that the Union industry suffered material injury, as set out in recitals (58) to (61) of the provisional Regulation, is also confirmed.

### 5. CAUSALITY

#### 5.1. Effect of the dumped imports

(37) In accordance with Articles 3(6) and 3(7) of the basic Regulation, at provisional stage it was examined whether the dumped imports of the product concerned originating in the PRC caused material injury to the Union industry to a degree that can be considered as material.

(40) One interested party contested the existence of a causal link between the dumped imports from the PRC and the material injury suffered by the Union industry. It argued that there is no correlation between the financial performance of the Union industry and the surge of dumped imports. It stressed that while the imports from the PRC had increased significantly in 2007 in relation to the earlier periods, the Union industry moved from a loss making to a profitable situation in that year.

(41) In this respect it is firstly noted that, between 2005 and the IP, while the imports more than doubled, the sales volume of the Union industry decreased significantly by 32 % leading to a loss of market share by 33 % during the same period. At the same time all the other injury indicators, such as production, capacity utilisation, investments, profitability and cash flow showed significant declining trends during that period. Secondly, the investigation showed that the weak performance of the Union industry was linked to the lowering of prices in its attempt to gain back the important customers lost to the Chinese exporters. As regards 2007, the Union industry continued its attempts to win back its customers by rationalisation efforts in order to keep the cost prices low and to be competitive with the low priced dumped imports. Accordingly, it is considered that the conclusions made in recitals (63) to (66) of the provisional Regulation are valid and therefore this claim had to be rejected.

(42) Following the above, it can be confirmed that the surge of low-priced dumped imports from the PRC had a considerable negative impact on the economic situation of the Union industry during the IP.

#### 5.2. Effect of other factors

(43) It is recalled that other factors were also examined in the causality analysis, namely the development of the demand, the evolution of the costs of the Union industry, its export performance and finally the possible impact of the imports from other countries.

(44) One interested party claimed that the material injury suffered by the Union industry was caused by factors other than the dumped imports, namely by (i) the contraction of demand due to the economic crisis and due to changes in technology, and (ii) the export performance of the Union industry.

(45) As regards the decrease in consumption it is noted that the sales volumes of the Union industry decreased considerably more (- 32 %) than the decrease in Union consumption (- 11 %), leading to market share loss of 33 %. At the same time, the market share of the Chinese exporters increased significantly by more than two times. Therefore, it is considered that the conclusion made in recital (69) of the provisional Regulation can be confirmed and therefore this claim had to be rejected.

(46) As regards the export performance, there was indeed a declining trend in the export sales of the Union industry for reasons provided in recital (72) of the provisional Regulation (i.e. in line with the negative worldwide situation in the automotive sector as from 2008). The investigation showed, however, that the export sales was not the core business of the Union industry as these sales

never exceeded 17 % of its Union sales during the period considered. More importantly, however, in addition to recitals (71) and (72) of the provisional Regulation it is noted that its sales prices in the export market remained above the sales prices within the Union. Hence, any negative impact caused by the decrease in export sale volume is considered to be very limited. Therefore, this claim had to be rejected.

(47) In the light of the foregoing and in the absence of any other comments recitals (67) to (80) of the provisional Regulation are confirmed.

## 6. UNION INTEREST

### 6.1. Interest of the Union industry

(48) In the absence of any comments with regard to the interest of the Union industry, the provisional conclusions as outlined in recitals (83) to (86) of the provisional Regulation are hereby confirmed.

### 6.2. Interest of importers, traders and users in the Union

(49) It is recalled that despite the fact that numerous parties were contacted, the level of cooperation with the investigation at the provisional stage of importers, traders and users was very low. It is recalled that only one trader, located in Germany, and one user, located in Italy, had cooperated fully at provisional stage.

(50) The cooperating user argued that the negative impact of the anti-dumping measures on its business has been underestimated in the analysis of the Union interest made at provisional stage, and claimed that in fact it would have difficulties in passing on the cost increase to its customers.

(51) It is recalled that the share of the business regarding the product concerned in this user activity accounts for between 15 to 25 % of its total business activity. Further analysis made after the imposition of provisional measures confirmed that the impact on the overall profit of the company would be limited. This user has a strong position in the business segment involving the product concerned, in particular in terms of reliability and supply security towards its customers. This element would indicate that this user is likely to be able to pass at least part of the cost increase to its customers. On that basis, the claim had to be rejected.

(52) Subsequent to the publication of the provisional Regulation, two users and one importer came forward and claimed that their activity will be negatively impacted by the imposition of the anti-dumping duty.

- (53) According to the data submitted by one of these two users, the business segment that includes molybdenum wire represents between 10 to 20 % of its total activity. On the basis of the elements provided, there are indications that, while the imposition of the anti-dumping duty is likely to have a negative impact on the part of the activity incorporating molybdenum wire, this user would still remain profitable. As for the other user, no data was provided that would substantiate its claim.
- (54) Regarding the importer, it is noted that it only provided overall basic data according to which it appeared that the imports of molybdenum wire from the PRC would account for between 10 and 20 % of the total imports from the PRC during the IP. In terms of the share of the molybdenum business in relation to the total company business — this would account for less than 7 %. Based on the information available it could, therefore, be concluded that while anti-dumping measures would have a negative impact on the business segment including molybdenum wire, the overall impact on the total company business would be limited.
- (55) In view of the above and in absence of any other comments, recitals (93) to (96) of the findings and conclusion of the provisional Regulation are hereby confirmed.

### 6.3. Competition and trade distorting effects

- (56) Subsequent to the publication of the provisional Regulation, some parties came forward and argued that the anti-dumping measures would lead to limited competition in the Union market.
- (57) As regards this claim, it should be reiterated that since the anti-dumping duties would re-establish a level playing field, the Chinese imports would likely continue entering the Union market, albeit at non-injurious prices. In addition, it is recalled that some alternative sources of supply exist. No substantiated evidence invalidating this conclusion was provided and therefore the conclusions made in recitals (97) to (99) of the provisional Regulation are hereby confirmed.

### 6.4. Conclusion on Union interest

- (58) Based on the above, it is confirmed that there are no compelling reasons against the imposition of anti-dumping duties against imports of molybdenum wire originating in the PRC in the present case.

## 7. DEFINITIVE ANTI-DUMPING MEASURES

### 7.1. Injury elimination level

- (59) In the absence of any substantiated comments that would alter the conclusion regarding the injury elimination

level, recitals (101) to (104) of the provisional Regulation are hereby confirmed.

### 7.2. Definitive measures

- (60) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at a level sufficient to eliminate the injury caused by the dumped imports without exceeding the dumping margin found. In this case, the duty rate should accordingly be set at the level of the injury margin found, i.e. 64,3 %.
- (61) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered, and, where appropriate, the findings have been modified accordingly.

### 7.3. Undertakings

- (62) The cooperating Chinese exporting producer expressed its willingness to offer a price undertaking in accordance with Article 8(1) of the basic Regulation.
- (63) However, this company was not granted either MET or IT, and it is, in general, the Commission's practice not to accept undertakings in such a case, since no individual determination of the duty margin could be established. On this basis, price undertakings could not be considered further.

### 7.4. Definitive collection of provisional duty

- (64) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation be definitively collected,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 10).



2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 shall be 64,3 %.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1247/2009 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 10), and originating in the People's Republic of China, shall be definitively collected.

*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 Luxembourg, 14 June 2010.

*For the Council*  
*The President*  
C. ASHTON

**COUNCIL IMPLEMENTING REGULATION (EU) No 512/2010**

**of 14 June 2010**

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal submitted by the European 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<sup>(3)</sup>, a definitive anti-dumping duty ('the existing measures') of EUR 33,25 per tonne on imports of ammonium nitrate ('AN') falling within CN codes 3102 30 90 and 3102 40 90 and originating, inter alia, in Ukraine. The investigation that led to these 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<sup>(4)</sup>, the Council exempted from the anti-dumping duties imposed by Council Regulation (EC) No 132/2001 imports to the Union of AN produced by companies from which undertakings would be accepted by the Commission. By Commission Regulation (EC) No 1001/2004<sup>(5)</sup>, as last amended by Commission Regulation (EC) No 1996/2004<sup>(6)</sup>, undertakings were accepted for a 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.
- (3) By Regulation (EC) No 945/2005<sup>(7)</sup>, following an interim review limited in scope to the definition of the product concerned, the Council decided that the defi-

inition of the product concerned should be clarified and that the measures in force should apply to the product concerned when incorporated into other fertilizers, in proportion to their content of ammonium nitrate, together with other marginal substances and nutrients.

- (4) By Regulation (EC) No 442/2007<sup>(8)</sup>, following an expiry review, the Council decided to prolong the existing measures, as clarified by Regulation (EC) No 945/2005, for a period of two years.
- (5) By Regulation (EC) No 661/2008<sup>(9)</sup>, following an expiry review, the Council imposed definitive anti-dumping measures on imports of AN originating in Russia.
- (6) By Regulation (EC) No 662/2008<sup>(10)</sup>, the Council amended Regulation (EC) No 442/2007 by accepting a price undertaking offered by one exporting producer.

**2. Request for a review**

- (7) On 22 January 2009, a request for an expiry review pursuant to Article 11(2) of the basic Regulation was lodged following the publication of a notice of impending expiry on 17 October 2008<sup>(11)</sup>. This request was lodged by the European Fertilizer Manufacturers Association (EFMA) ('the applicant') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of AN.
- (8) The applicant alleged and provided sufficient *prima facie* evidence that there is a likelihood of recurrence of dumping and injury to the Union industry with regard to imports of AN originating in Ukraine ('the country concerned').
- (9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 23 April 2009, by a notice of initiation published in the *Official Journal of the European Union*<sup>(12)</sup>, the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ L 56, 6.3.1996, p. 1.

<sup>(3)</sup> OJ L 23, 25.1.2001, p. 1.

<sup>(4)</sup> OJ L 182, 19.5.2004, p. 28.

<sup>(5)</sup> OJ L 183, 20.5.2004, p. 13.

<sup>(6)</sup> OJ L 344, 20.11.2004, p. 24.

<sup>(7)</sup> OJ L 160, 23.6.2005, p. 1.

<sup>(8)</sup> OJ L 106, 24.4.2007, p. 1.

<sup>(9)</sup> OJ L 185, 12.7.2008, p. 1.

<sup>(10)</sup> OJ L 185, 12.7.2008, p. 35.

<sup>(11)</sup> OJ C 264, 17.10.2008, p. 16.

<sup>(12)</sup> OJ C 94, 23.4.2009, p. 15.

### 3. Investigation

#### 3.1. Investigation period

- (10) The investigation of continuation or recurrence of dumping covered the period from 1 April 2008 to 31 March 2009 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 2005 to the end of the RIP ('period considered').

#### 3.2. Parties concerned by the investigation

- (11) The Commission officially advised the exporting producers, importers and users known to be concerned and their associations, the representatives of the exporting country, the applicant and the Union producers of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

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

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

- (14) After examination of the information submitted, and given that twelve Union producers indicated their willingness to cooperate, it was decided that sampling was necessary with regard to Union producers. No importers came forward by providing the information requested in the notice of initiation.

- (15) Twelve Union producers, accounting for around 80 % of the total Union production during the RIP, properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. On that basis, the Commission selected, in accordance with Article 17 of the basic Regulation, a representative sample based on the largest representative volume of production and sales of AN in the Union which can reasonably be investigated within the time available. Five Union producers, accounting for 57 % of the total production of the Union industry during the RIP, were selected in the sample.

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

- (17) Questionnaires were sent to the five sampled Union producers and to all known exporting producers in the country concerned.

- (18) Replies to the questionnaires were received from the five sampled Union producers and three exporting producers in the country concerned.

- (19) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) Exporting producers in Ukraine:

— CJSC Severodonetsk Azot Association, Severodonetsk,

— JSC Concern Stirol, Gorlovka,

— OJSC Rivneazot, Rivne,

(b) Union producers:

— GrowHow UK Limited, UK,

— GPN, Paris, France,

— Zakłady Azotowe Puławy SA, Poland,

— Yara SA, Brussels, Belgium,

— Achema, Jonavos, Lithuania.

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

- (20) The product concerned is solid fertilizers with an ammonium nitrate content exceeding 80 % by weight originating in Ukraine, currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91. 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.

- (21) It should be noted that the scope of the product concerned was clarified in Regulation (EC) No 945/2005.

## 2. Like product

- (22) As established in the original investigation, this review investigation confirmed that AN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. The product concerned and the products manufactured and sold by the exporting producers on their domestic market and to third countries, as well as those manufactured and sold by the Union producers on the Union market, have thus been 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.

## C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

### 1. General

- (23) Cooperation was obtained from three Ukrainian exporting producers. A fourth known exporting producer did not cooperate in the investigation.
- (24) The comparison of the export volume of the three cooperating exporting producers with the total volume of exports to the Union from Ukraine showed that the three cooperating exporting producers accounted for more than 90 % of all Union imports from Ukraine during the RIP. The level of cooperation was therefore considered to be high.
- (25) Total import volumes of the product concerned from Ukraine were low, representing a market share of 1,1 % in the RIP when compared to the Union market as a whole.

## 2. Dumping of imports during the RIP

### 2.1. Normal value

- (26) It is recalled that in the previous expiry review, Ukraine was not yet considered a market economy country and therefore the normal value was based on data obtained from a cooperating producer in the USA, the analogue country.
- (27) In the present review, normal value was based on data obtained and verified at the premises of the three cooperating exporting producers in Ukraine. The Commission examined whether their domestic sales could be considered as having been 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 on the domestic market by the cooperating exporting producers were examined.
- (28) As regards gas costs, it was found that Ukraine was importing the majority of the gas consumed in the production of AN from Russia. All data available and verified during the investigation indicated that Ukraine imported natural gas from Russia at a price which was,

during the RIP, around 40 % below the price of natural gas from Russia when exported to the Union. However, it was found that in the last quarter of the RIP the prices were similar.

- (29) It was found that apart from one product type exported by one producer, domestic sales were made in the ordinary course of trade during the RIP. Normal value was therefore established either based on the price paid or payable on the domestic market in Ukraine by unrelated customers pursuant to Article 2(1) of the basic Regulation or based on constructed normal value for the product type not sold in the ordinary course of trade. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported type a reasonable amount of selling, general and administrative expenses (SG&A) and a reasonable margin of profit. These amounts for SG&A and profit were based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the producer concerned.
- (30) It should be noted that the normal value was determined without an adjustment for the gas costs borne by the Ukrainian exporting producers in accordance with Article 2(5) of the basic Regulation. This was because, as shown in recitals 32 to 34, the use of the unadjusted domestic costs and prices of the Ukrainian exporting producers in spite of the apparently distorted gas prices already clearly shows that dumping took place during the RIP. As a consequence, and given the fact that the purpose of an expiry review is to determine whether dumping would be likely to continue or recur should measures be repealed in order to determine whether the currently applicable measures should be maintained or repealed, it was considered that it was not necessary to examine whether an adjustment under Article 2(5) of the Basic Regulation was justified in this case.

### 2.2. Export price

- (31) In accordance with Article 2(8) of the basic Regulation, the export price was established by reference to the price actually paid or payable for the product concerned when sold for export to the Community. All sales of the three cooperating exporting producers were made directly to independent customers in the Union.

### 2.3. Comparison

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

#### 2.4. Dumping margin

- (33) The dumping margin was established on the basis of a comparison of the weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.
- (34) On a country-wide basis, a weighted average dumping margin of 6-7 % was established for the three cooperating exporting producers concerned.

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

#### 3.1. Spare capacity and attractiveness of the Union market

- (35) In the RIP, domestic sales of the three cooperating exporting producers represented on average 46 % of their production capacity.
- (36) Though the three cooperating exporting producers sold a big proportion of their production on the domestic market, they were also dependent on exports to third countries. In the RIP they had a spare capacity corresponding to around 6 % of the Union consumption.
- (37) Based on information in the review request regarding the fourth known Ukrainian producer which did not cooperate in the investigation, the total spare capacity in Ukraine during the RIP was estimated to amount to around 9 % of the Union consumption.
- (38) Certain Ukrainian cooperating exporting producers claimed that they were increasingly losing market share on their domestic market to the benefit of Russian producers which can offer very low prices due to the much lower gas costs in Russia. It therefore appeared unlikely that the Ukrainian domestic market could absorb the spare production capacity and therefore any increase in production is likely to be exported.
- (39) The three cooperating companies exported AN to many other third countries on several continents during the RIP. However, it should be noted that certain traditional third country markets are closed to Ukrainian exports either because of anti-dumping measures in force (e.g. USA with anti-dumping measures of more than 100 %) and/or because of safety restrictions (e.g. the People's Republic of China, Australia). In any event, the Union is the biggest, most attractive and at the same time geographically closest export market. Its attractiveness is additionally boosted by logistic advantages resulting from low rail tariffs in Ukraine.
- (40) In view of the above, it cannot be excluded that a large part of the spare capacity available in Ukraine could be used to increase exports to the Union in the absence of anti-dumping measures.

#### 3.2. Prices in different export markets

- (41) An analysis of export sales of the three cooperating Ukrainian exporting producers to third countries showed that during the RIP export prices to third countries, when established on a CIF level using the international freight rates provided in the request for a review, were up to 25 % lower than the prevailing market price in the Union.
- (42) On that basis, it therefore appeared that there would be an incentive for Ukrainian exports to third countries to be shifted to the Union, should measures be repealed. The higher prices in the Union market would allow Ukrainian exporters to achieve better profit margins.
- (43) Based on the figures provided by the three cooperating exporting producers, it could also be established that on a country-wide level, exports from Ukraine to other third countries were made at dumped prices during the RIP.

#### 3.3. Conclusion of the likelihood of continuation or recurrence of dumping

- (44) In view of the findings described above, it can be concluded that the exports from Ukraine are still being dumped and that there is a likelihood of continuation of dumping in the Union market in case the current anti-dumping measures are removed. Indeed, taking into account the existing spare capacity in Ukraine and the attractiveness of the Union market, there appears to be an incentive for Ukrainian exporting producers to i) increase their exports to the Union market and ii) shift AN exports from other third country markets to the Union market at dumped prices, at least as far as two exporting producers are concerned.
- (45) Furthermore, the weighted average export prices of the cooperating exporting producers to third country markets were found to be significantly lower than the prevailing price level in the Union. This reinforces the likelihood of increased exports from Ukraine to the Union at dumped prices, should measures be allowed to lapse.

### D. DEFINITION OF THE UNION INDUSTRY

- (46) Within the Union, the like product is manufactured by 16 companies or groups of companies whose output constitutes the total Union production of the like product within the meaning of Article 4(1) of the basic Regulation.
- (47) Twelve Union producers cooperated with the investigation:
- Achema AB (Lithuania),
  - Agropolychim JSC (Bulgaria),
  - Azomures (Romania),

- BASF AG (Germany),
- Fertiberia SA (Spain),
- GPN SA (France),
- GrowHow UK Ltd (United Kingdom),
- Neochim PLC (Bulgaria),
- Nitrogénművek Rt (Hungary),
- Yara (Belgium, France, Germany, Italy and the Netherlands),
- Zakłady Azotowe Puławy SA (Poland),
- Zakłady Azotowe w Tarnowie-Mościcach (Poland).
- (48) Given that these 12 Union producers accounted for around 80 % of the total Union production during the RIP, it is considered that they constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They will be referred to as the 'Union industry'.
- (49) As indicated in recitals 14 and 15, the selection of the sample of five Union producers was made on the basis of these 12 producers. All sampled producers cooperated and sent questionnaire replies within the deadlines. In addition, the remaining seven cooperating producers duly provided certain general data for the injury analysis.
- (50) The apparent Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the sales volumes of the other Union producers on the Union market, Eurostat data for all Union imports and the information of the questionnaire responses of the cooperating companies as far as the imports of the product concerned from Ukraine are concerned. Given the enlargement of the Union to 27 Member States in 2007, for the sake of clarity and consistency of the analysis, all injury indicators were established on the basis of the EU-27 market throughout the period considered.
- (51) Between 2005 and the RIP, Union consumption decreased by 10 %.

## E. SITUATION ON THE UNION MARKET

### 1. Consumption in the Union market

	2005	2006	2007	2008	RIP
Total Union consumption in tonnes	7 861 796	6 983 467	8 023 633	7 638 439	7 054 327
<i>Index (2005 = 100)</i>	100	89	102	97	90

### 2. Volume, market share and prices of imports from Ukraine

- (52) The volume, market share and average prices of the imports from Ukraine developed as set out in the table below. The quantity and price trends were based on the information obtained from the questionnaire responses of the cooperating exporting producers, import statistics (Eurostat) and Ukrainian export statistics.

	2005	2006	2007	2008	RIP
Volume of imports (tonnes)	76 867	42 912	29 420	48 232	75 582
Market share	1 %	0,6 %	0,4 %	0,6 %	1,1 %
Prices of imports (EUR/tonne)	123	139	145	259	230
<i>Index (2005 = 100)</i>	100	113	118	211	187

- (53) The volume of imports from Ukraine decreased consistently until 2007 but reached in the RIP almost the same level as in 2005. The Ukrainian market share increased slightly from 1 % in 2005 to 1,1 % in the RIP. The unit prices evolved positively from 123 to 230 EUR/tonne over the period considered. This increase in the RIP has to be seen in line with the worldwide evolution of prices and with the prices of the main raw material.

- (54) For the purpose of calculating the level of price undercutting during the RIP, the Union industry's ex-works prices to unrelated customers were compared with the CIF Union frontier import prices of the cooperating exporting producers in the country concerned, duly adjusted in order to reflect a landed price. On that basis, the comparison showed that imports from Ukraine were undercutting the prices of the Union industry by 22,5 % on average during the RIP. An undercutting margin of 11 % was still found to exist from Ukrainian exporters when the anti-dumping duty was added on top of their prices to the Union.

### 3. Imports from other countries

- (55) 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 based on Eurostat.

	2005	2006	2007	2008	RIP
Volume of imports from Russia (tonnes)	328 972	217 539	35 852	136 984	184 170
Market share	4,2 %	3,1 %	0,4 %	1,8 %	2,6 %
Prices of imports from Russia (EUR/tonne)	122	124	144	275	235
Volume of imports from Georgia (tonnes)	153 844	85 870	88 622	214 879	222 912
Market share	2,0 %	1,2 %	1,1 %	2,8 %	3,2 %
Prices of imports from Georgia (EUR/tonne)	164	177	174	325	304
Volume of imports from Kazakhstan (tonnes)	0	4 845	112 239	81 410	100 761
Market share	0 %	0,1 %	1,4 %	1,1 %	1,4 %
Prices of imports from Kazakhstan (EUR/tonne)	0	147	151	255	242
Volume of imports from all other countries (tonnes)	65 253	118 927	99 380	109 755	91 785
Market share	0,8 %	1,7 %	1,2 %	1,4 %	1,3 %
Prices of imports from all other countries (EUR/tonne)	190	170	240	242	265

- (56) There was a significant price increase in the Union market from all third countries which occurred in 2008 and the RIP. It appeared that, apart from Russia, all the countries mentioned in the table above increased their export volumes to the Union during the period considered. In the case of Russian imports, they are subject to an anti-dumping fixed duty of EUR 47,07 per tonne and were imported, as the Ukrainian imports, at the lowest price compared to all other exporting countries.

### 4. Economic situation of the Union industry

- (57) 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 Union industry.

## 4.1. Preliminary remarks

- (58) Since recourse was made to sampling for the investigation of injury, certain injury indicators such as production, production capacity, sales, market share, productivity and employment were analysed for the Union industry as a whole ('Union' in the tables below). Other injury indicators relating to the performances of individual companies, such as prices, stocks, costs of production, profitability, wages, investments, return on investment, cash flow, and ability to raise capital were examined on the basis of information collected at the level of the sampled Union producers ('S.P.' in the tables below).

## 4.2. Data relating to the Union industry as a whole

## (a) Production

- (59) The Union industry's production decreased by 18 % between 2005 and the RIP, i.e. from a level of around 7 million tonnes in 2005 to a level of around 5,8 million tonnes in the RIP. As regards the production for captive use, it remained modest during the period considered and did not affect the situation of the Union industry in particular during the RIP.

	2005	2006	2007	2008	RIP
Union production (tonnes)	7 133 844	6 359 967	7 146 911	6 454 234	5 843 181
<i>Index (2005 = 100)</i>	100	89	100	90	82
Union production used for captive transfers	210 437	176 413	185 223	138 733	119 053
As % of total production	2,9 %	2,8 %	2,6 %	2,1 %	2,0 %

## (b) Capacity and capacity utilisation rates

- (60) Production capacity remained by and large stable throughout the period considered. In line with the decrease in production, the resulting capacity utilisation decreased, from a level of 55 % in 2005 to a level of 45 % in the RIP. As already noted in the original investigation, capacity utilisation for AN can be affected by the production of other products which can be produced with the same production equipment. Therefore the trend in the capacity utilisation is less relevant for the assessment of the economic situation of the Union industry.

	2005	2006	2007	2008	RIP
Union capacity (tonnes)	13 059 281	12 824 281	12 820 594	13 069 317	13 077 281
Union capacity utilisation	55 %	50 %	56 %	49 %	45 %

## (c) Sales volume

- (61) Sales by the Union industry on the Union market decreased by 14 % between 2005 and the RIP. This development has to be seen against the background of a shrinking Union consumption in the same period.

	2005	2006	2007	2008	RIP
Union sales volume (tonnes) to unrelated parties	5 365 834	4 756 093	5 495 037	5 157 788	4 605 629
<i>Index (2005 = 100)</i>	100	89	102	96	86
Union sales volume to unrelated parties in third countries (tonnes)	887 056	727 176	637 408	559 393	548 090
<i>Index (2005 = 100)</i>	100	82	72	63	62



## (d) Market share

- (62) The market share held by the Union industry remained stable from 2005 to 2008 but decreased by three percentage points between 2008 and the RIP.

	2005	2006	2007	2008	RIP
Union market share	68 %	68 %	68 %	68 %	65 %
<i>Index (2005 = 100)</i>	100	100	100	100	96

## (e) Employment

- (63) The level of employment of the Union industry decreased by 8 % between 2005 and the RIP.

	2005	2006	2007	2008	RIP
Union employment product concerned	3 627	3 578	3 458	3 494	3 354
<i>Index (2005 = 100)</i>	100	99	95	96	92

## (f) Productivity

- (64) During the period considered, the average output per person employed by the Union industry decreased by 11 %. This is explained by the fact that the relative decrease in output bypassed the relative decrease in employment.

	2005	2006	2007	2008	RIP
Union productivity (tonnes per employee)	1 967	1 778	2 067	1 847	1 742
<i>Index (2005 = 100)</i>	100	90	105	94	89

## (g) Magnitude of dumping margin

- (65) As concerns the magnitude of the actual margin of dumping, given the currently small volume of imports from Ukraine, this impact is considered not to be significant and the indicator not relevant for the injury analysis.

## 4.3. Data relating to the sampled Union producers

## (a) Sales prices and factors affecting domestic prices

- (66) The sampled Union industry producers' average net sales price increased substantially in 2008 and the RIP reflecting the prevailing favourable international market conditions of AN during that period.

	2005	2006	2007	2008	RIP
S.P. Unit price (EUR/tonne)	165	182	189	309	315
<i>Index (2005 = 100)</i>	100	110	115	187	191

## (b) Stocks

- (67) The level of closing stocks of the Union industry decreased by 26 % from 2005 to the RIP. A sharp increase registered in 2006 was due to a steep decrease in sales volume between 2005 and 2006.

	2005	2006	2007	2008	RIP
S.P. Closing stocks (tonnes)	276 569	489 535	345 137	252 072	203 579
<i>Index (2005 = 100)</i>	100	177	125	91	74

## (c) Wages

- (68) Between 2005 and the RIP, the average wage per employee increased by 6 %, as shown in the table below. In the light of the inflation rate and the overall reduced employment, this increase of wages is considered to be moderate.

	2005	2006	2007	2008	RIP
S.P. Average labour cost per employee (000 EUR)	40,4	41,2	43,3	45,0	43,0
<i>Index (2005 = 100)</i>	100	102	107	111	106

## (d) Investments

- (69) The annual investments in the like product made by the five sampled producers developed positively during the period considered and increased by 70 %. These investments related mainly to the modernisation of certain machinery. This shows that the Union industry is continuously willing to improve its competitiveness.

	2005	2006	2007	2008	RIP
S.P. Net investments (000 EUR)	46 668	52 191	64 319	73 948	79 379
<i>Index (2005 = 100)</i>	100	112	138	158	170

## (e) Profitability and return on investments

- (70) Profitability of the sampled producers improved significantly, notably since 2006, as it reached the level of 28,1 % on turnover during the RIP. The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the positive trend in profitability over the period considered.

	2005	2006	2007	2008	RIP
S.P. Profitability of EC sales to unrelated customers (% of net sales)	9,2 %	7,9 %	14,9 %	25,3 %	28,1 %
<i>Index (2005 = 100)</i>	100	85	162	274	304
S.P. ROI (profit in % of net book value of investment)	35,2 %	25,8 %	41,1 %	109,1 %	114,1 %
<i>Index (2005 = 100)</i>	100	73	117	310	324

## (f) Cash flow and ability to raise capital

- (71) Cash flow has increased significantly during the period considered and is in line with the development of the overall profitability during that period.

	2005	2006	2007	2008	RIP
S.P. Cash flow (000 EUR)	84 567	52 182	188 535	373 843	386 721
<i>Index (2005 = 100)</i>	100	63	223	442	457

- (72) The investigation did not reveal any difficulties encountered by the sampled Union producers in raising capital. In this respect, it should be noted that as several of these companies are part of large groups, they finance their activities within the group to which they belong either through cash-pooling schemes or through intra-group loans granted by the mother companies.

representing 9 % of the Union market, as mentioned in recital 37. This surplus of capacity indicates that Ukrainian producers have the possibility to quickly increase their current production and thus their exports of AN.

## 5. Conclusion

- (73) Between 2005 and the RIP, most injury indicators developed positively: unit sales prices and profitability improved substantially, the latter reaching a level of 28,1 % during the RIP. Investments, return on investment and cash-flow also evolved positively.

- (78) Moreover, given the relatively small size of their domestic market, Ukrainian producers are heavily dependent on exports to third countries. As explained in recital 41, these exports were made at prices substantially lower than the prevailing market price in the Union.

- (74) Although production and sales volumes decreased considerably over the period considered, this has to be seen against a shrinking Union market in the order of minus 10 %.

- (79) Based on the above facts and considerations, the Union market would appear to be attractive for the Ukrainian exporting producers in terms of prices as compared to all other export markets. It can thus reasonably be expected that a considerable part of the volumes exported to third countries would be directed toward the Union market, should the measures be allowed to lapse. The proximity of the Union market, as compared to other export markets, would also render the Union market more attractive and would therefore increase the likelihood of a redirection of current exports by Ukrainian producers from third countries to the Union.

- (75) Overall, the situation of the Union industry has improved significantly as compared to its situation prior to the imposition of the anti-dumping measures on imports of AN from the country concerned in 2001.

## F. LIKELIHOOD OF RECURRENCE OF INJURY

### 1. General

- (76) In the context of the likelihood of recurrence of injury, two main parameters were analysed: (i) the likely export volumes and prices in the country concerned and (ii) the likely effect of projected volumes and prices from the country concerned on the Union industry.

- (80) Given the currently weak market position of Ukrainian products in the Union, the Ukrainian exporters would need to gain market share or broaden their customer base and are likely to manage this by offering AN at dumped prices as was established during the RIP.

### 2. Likely export volumes and prices of the country concerned

- (77) There is a known spare capacity of around 650 thousand tonnes available for the cooperating Ukrainian producers,

- (81) On the basis of the above, it is therefore likely that significant volumes of AN produced in Ukraine would be redirected to the Union market at dumped prices substantially undercutting Union industry's prices, if the measures are allowed to lapse.

### 3. Impact on the Union industry of the projected export volumes and price effects in case of repeal of the measures

- (82) The investigation has shown that AN is a commodity product for which prices can significantly be affected by the presence of low-priced imports undercutting the Union industry's prices. In other words, the Union market for AN is relatively volatile. The favourable worldwide market conditions for AN prevailing during the period considered played an important role in keeping prices at a high level and the applicable anti-dumping measures reduced the possibility of price distortion in the Union market. During that period, there was a tight balance between supply and demand which resulted in higher prices for all nitrogen fertilisers, which are commodity products. AN is also a commodity product the pricing of which is influenced by numerous factors, such as the price of gas, which has a considerable impact on the supply because it is the most important cost element, weather conditions, crop and grain stock levels, which overall result in a reduced or increased demand for fertilisers.
- (83) With particular regard to the Union market, it can be expected that the demand for AN will increase slightly from the level observed in the RIP. Given that the prices set by the Ukrainian exporting producers significantly undercut the prices of the Union industry, the likely increase in import volumes from Ukraine would force the Union industry either to lower significantly its prices, thereby its profits, or to lose significant market share and thus revenues, or both. The successful restructuring process of the Union industry could probably only partially counterbalance such a likely price depression and the whole recovery process would be put in danger. Therefore, a deterioration of the Union industry's overall economic situation is likely to result from the repeal of the measures.

### 4. Conclusion on the likelihood of recurrence of injury

- (84) The above facts and considerations lead to the conclusion that, should the current measures be allowed to lapse, exports from the country concerned would likely occur in significant volumes and at dumped prices undercutting the Union industry's prices. This would in all likelihood have the effect of introducing a price-depressive trend on the market, with an expected negative impact on the economic situation of the Union industry. This would, in particular, impede the financial recovery that was achieved during the period considered, leading to a recurrence of injury.

## G. UNION INTEREST

### 1. Introduction

- (85) It was examined whether compelling reasons existed that could lead to the conclusion that it is not in the Union interest to renew the anti-dumping measures in force. For

this purpose, and in accordance with Article 21 of the basic Regulation, the impact of the renewal of the measures on all parties involved in this proceeding and the consequences of the expiry of the measures were considered on the basis of all evidence submitted.

- (86) In order to assess the impact of the possible maintenance of the measures, all interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (87) It should be recalled that, in the original investigation, the adoption of measures was considered not to be contrary to the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

### 2. Interest of the Union industry

- (88) The Union industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of anti-dumping measures in 2001. In particular, the Union industry improved its profit situation between 2005 and the RIP considerably and restructured itself successfully.
- (89) It can thus reasonably be expected that the Union industry will continue to benefit from the measures currently imposed and further recover by maintaining and stabilising its profitability. Should the measures not be maintained, it is likely that increased imports at dumped prices from the country concerned will occur, thereby causing injury to the Union industry by exerting a downward pressure on sale prices which will negatively affect its currently positive financial situation.

### 3. Interest of importers

- (90) As mentioned in recital 14, no importer indicated its willingness to be included in the sample and to provide the basic information required in the sampling form. It is recalled that in previous investigations it was found that the impact of the imposition of measures would not be significant because, as a rule, importers do not only deal in AN but also, to a significant extent, in other fertilisers. The lifting of anti-dumping measures on other fertilisers can only reinforce the foregoing. In that context, anti-dumping measures applicable on imports of urea originating in Russia and in Belarus, Croatia, Libya and Ukraine were lifted in August 2007 and March 2008 respectively<sup>(1)</sup>. However, in the absence of cooperation from importers and thus of any conclusive evidence allowing to assess any significant negative consequences, it was concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

<sup>(1)</sup> OJ L 198, 31.7.2007, p. 4 and OJ L 75, 18.3.2008, p. 33.

(91) There is no reliable information available indicating that the maintenance of the measures will have a significant negative effect on importers or traders.

#### 4. Interest of users

(92) The users of AN in the Union are farmers. In the original investigation, it was concluded that given the small incidence of AN on the farmers' activity, any increase in these costs was unlikely to have a significant adverse effect on them.

(93) Within the present investigation two farmer associations submitted comments advocating for the termination of the measures. They mainly claimed that the Common Agricultural Policy reform of 2003 reduced the use of market intervention mechanisms and broke the link between Union support and production. Consequently, this process of liberalisation forced Union farmers to operate at world market conditions. Only the free choice of AN suppliers could prevent prices of farm products from increasing substantially.

(94) However, the possible continuation of the current anti-dumping measures will not prevent users from freely choosing their AN suppliers, but it will maintain a fair level playing field in the Union market where effective competition will be enhanced. Therefore, based on the above, it can be concluded that the continuation of the anti-dumping measures against Ukraine will not have significant adverse effects on the users of the product concerned.

#### 5. Conclusion on Union interest

(95) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

#### H. ANTI-DUMPING MEASURES

(96) All parties were informed of the essential facts and considerations on the basis of which it was intended to

recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. The comments made were taken duly into consideration where warranted.

(97) It follows from the above that, as provided for in Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of AN originating in Ukraine should be maintained. It is recalled that these measures consist of specific duties.

(98) As indicated in recital 28, the Ukrainian import prices for natural gas have shown convergence with gas prices prevailing on the Union market in the last quarter of the RIP. Therefore, the potentially injurious effects of dumping may be affected by the impact on export prices of the production cost increases caused by the evolution of domestic gas prices should the latter prove to be of a lasting nature. Therefore, it is considered prudent to limit the maintenance of the measures to two years.

(99) The undertakings accepted by Commission Decision 2008/577/EC<sup>(1)</sup> remain in force,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91, and originating in Ukraine.

2. The rate of this anti-dumping duty shall be a fixed amount of euro per tonne as shown below:

Product description	CN code	TARIC code	Amount of duty (Euro per tonne)
Ammonium nitrate other than in aqueous solutions	3102 30 90	—	33,25
Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	33,25
Double salts and mixtures of ammonium sulphate and ammonium nitrate — Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	33,25
Double salts and mixtures of calcium nitrate and ammonium nitrate — Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	33,25

<sup>(1)</sup> OJ L 185, 12.7.2008, p. 43.

Product description	CN code	TARIC code	Amount of duty (Euro per tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, with no phosphorus and no potassium content	3105 10 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and/or a potassium content evaluated as K <sub>2</sub> O of less than 3 % by weight	3105 10 00	20	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and/or a potassium content evaluated as K <sub>2</sub> O of 3 % by weight or more but less than 6 % by weight	3105 10 00	30	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and/or a potassium content evaluated as K <sub>2</sub> O of 6 % by weight or more but less than 9 % by weight	3105 10 00	40	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and/or a potassium content evaluated as K <sub>2</sub> O of 9 % by weight or more but not exceeding 12 % by weight	3105 10 00	50	29,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and a potassium content evaluated as K <sub>2</sub> O of less than 3 % by weight	3105 20 10	30	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and a potassium content evaluated as K <sub>2</sub> O of 3 % by weight or more but less than 6 % by weight	3105 20 10	40	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and a potassium content evaluated as K <sub>2</sub> O of 6 % by weight or more but less than 9 % by weight	3105 20 10	50	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and a potassium content evaluated as K <sub>2</sub> O of 9 % by weight or more but not exceeding 12 % by weight	3105 20 10	60	29,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of less than 3 % by weight	3105 51 00	10	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 3 % by weight or more but less than 6 % by weight	3105 51 00	20	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 6 % by weight or more but less than 9 % by weight	3105 51 00	30	30,26

Product description	CN code	TARIC code	Amount of duty (Euro per tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 9 % by weight or more but not exceeding 10,40 % by weight	3105 51 00	40	29,79
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of less than 3 % by weight	3105 59 00	10	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 3 % by weight or more but less than 6 % by weight	3105 59 00	20	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 6 % by weight or more but less than 9 % by weight	3105 59 00	30	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 9 % by weight or more but not exceeding 10,40 % by weight	3105 59 00	40	29,79
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K <sub>2</sub> O of less than 3 % by weight	3105 90 91	30	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K <sub>2</sub> O of 3 % by weight or more but less than 6 % by weight	3105 90 91	40	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K <sub>2</sub> O of 6 % by weight or more but less than 9 % by weight	3105 90 91	50	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K <sub>2</sub> O of 9 % by weight or more but not exceeding 12 % by weight	3105 90 91	60	29,26

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 <sup>(1)</sup>, the amount of anti-dumping duty, calculated on the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

#### Article 2

1. Notwithstanding Article 1, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with the subsequent paragraphs of this Article.

2. 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 for release into free circulation which are invoiced by the exporting producer from which undertaking is accepted by the Commission and whose name is listed in the Commission Decision 2008/577/EC, as from time to time amended, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the exporting producer to the first independent customer in the Union, and,

— such imports are accompanied by an undertaking invoice, which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex to this Regulation, and,

<sup>(1)</sup> OJ L 253, 11.10.1993, p. 40.

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

3. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

— whenever it is established, in respect of imports described in paragraph 2, that one or more of the conditions listed in that paragraph are not fulfilled, or

— when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices invalid.

*Article 3*

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

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

Done at Luxembourg, 14 June 2010.

*For the Council*  
*The President*  
C. ASHTON

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## ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales to the Union of goods which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Union frontier.
6. The exact description of the goods, including:
  - the CN code used for the purpose of the undertaking,
  - the nitrogen ('N') content of the product (in percentages),
  - the TARIC code,
  - the quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
  - the price per tonne,
  - the applicable payment terms,
  - the applicable delivery terms,
  - total discounts and rebates.
8. Name of the company acting as an importer in the Union to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

I, the undersigned, certify that the sale for direct export to the European Union of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2008/577/EC (\*). I declare that the information provided in this invoice is complete and correct.

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(\*) OJ L 185, 12.7.2008, p. 43.

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**COMMISSION REGULATION (EU) No 513/2010****of 15 June 2010****amending Annex VI to Council Regulation (EC) No 1234/2007 as regards the adjustment of the quotas as from the 2010/2011 marketing year in the sugar sector**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>, and in particular Article 59(1), in conjunction with Article 4 thereof,

Whereas:

- (1) Annex VI to Regulation (EC) No 1234/2007 lays down the national and regional quotas for the production of sugar, isoglucose and inulin syrup. For the 2010/2011 marketing year those quotas should be adjusted taking into account the decision of the French authorities to apply Article 60 of Regulation (EC) No 1234/2007.

- (2) Annex VI to Regulation (EC) No 1234/2007 should therefore be amended accordingly.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex VI to Regulation (EC) No 1234/2007 is replaced by the text set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the third 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, 15 June 2010.

*For the Commission*  
*The President*  
José Manuel BARROSO

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<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

## ANNEX

## 'ANNEX VI

**NATIONAL AND REGIONAL QUOTAS**  
**from the 2010/2011 marketing year onwards**

<i>(in tonnes)</i>			
Member States or regions (1)	Sugar (2)	Isoglucose (3)	Inulin syrup (4)
Belgium	676 235,0	114 580,2	0
Bulgaria	0	89 198,0	
Czech Republic	372 459,3		
Denmark	372 383,0		
Germany	2 898 255,7	56 638,2	
Ireland	0		
Greece	158 702,0	0	
Spain	498 480,2	53 810,2	
France (metropolitan)	3 004 811,15		0
French overseas departments	432 220,05		
Italy	508 379,0	32 492,5	
Latvia	0		
Lithuania	90 252,0		
Hungary	105 420,0	220 265,8	
Netherlands	804 888,0	0	0
Austria	351 027,4		
Poland	1 405 608,1	42 861,4	
Portugal (mainland)	0	12 500,0	
Autonomous Region of the Azores	9 953,0		
Romania	104 688,8	0	
Slovenia	0		
Slovakia	112 319,5	68 094,5	
Finland	80 999,0	0	
Sweden	293 186,0		
United Kingdom	1 056 474,0	0	
<b>TOTAL</b>	<b>13 336 741,2</b>	<b>690 440,8</b>	<b>0'</b>

## COMMISSION REGULATION (EU) No 514/2010

of 15 June 2010

concerning the authorisation of *Pediococcus pentosaceus* (DSM 16244) as a feed additive for all animal species

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition<sup>(1)</sup>, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for the authorisation of the preparation set out in the Annex to this Regulation. The application was accompanied by the particulars and documents required pursuant to Article 7(3) of Regulation (EC) No 1831/2003.
- (3) The application concerns the authorisation of *Pediococcus pentosaceus* (DSM 16244) as a feed additive for all animal species, to be classified in the additive category 'technological additives'.
- (4) It results from the opinion of the European Food Safety Authority (the Authority) of 3 February 2010<sup>(2)</sup> that *Pediococcus pentosaceus* (DSM 16244) does not have an adverse effect on animal health, human health or the

environment, and that this preparation has the potential to improve the production of silage. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Community Reference Laboratory established by Regulation (EC) No 1831/2003.

- (5) The assessment of *Pediococcus pentosaceus* (DSM 16244) shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this additive should be authorised as specified in the Annex to this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

*Article 1*

The preparation specified in the Annex, belonging to the additive category 'technological additives' and to the functional group 'silage additives', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

*Article 2*

This Regulation shall enter into force on the 20th 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, 15 June 2010.

For the Commission  
The President  
José Manuel BARROSO

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> *The EFSA Journal* 2010; 8(2):1502.

## ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of organic material			
<b>Category of technological additives. Functional group: silage additives</b>									
1k2101	—	<i>Pediococcus pentosaceus</i> (DSM 16244)	<p>Additive composition:</p> <p>Preparation of <i>Pediococcus pentosaceus</i> (DSM 16244) containing a minimum of <math>4 \times 10^{11}</math> CFU/g additive</p> <p>Characterisation of the active substance:</p> <p><i>Pediococcus pentosaceus</i> (DSM 16244)</p> <p>Analytical method <sup>(1)</sup>:</p> <p>Enumeration: spread plate method using MSR agar at 37 °C (EN15786:2009).</p> <p>Identification: pulsed-field gel electrophoresis (PFGE) method.</p>	All animal species	—	—	—	<ol style="list-style-type: none"> <li>1. In the directions for use of the additive and premixture, indicate the storage temperature and storage life.</li> <li>2. The minimum dose of the additive used singly is: <math>1 \times 10^8</math> CFU/kg of organic material.</li> <li>3. For Safety: It is recommended to use breathing protection and gloves during handling.</li> </ol>	6 July 2020

<sup>(1)</sup> Details of the analytical methods are available at the following address of the Community Reference Laboratory: [www.irmm.jrc.ec.europa.eu/crl-feed-additives](http://www.irmm.jrc.ec.europa.eu/crl-feed-additives)

## COMMISSION REGULATION (EU) No 515/2010

of 15 June 2010

amending Regulation (EC) No 1137/2007 as regards the use of the feed additive *Bacillus subtilis* (O35) in feed containing lasalocid sodium, maduramycin ammonium, monensin sodium, narasin, salinomycin sodium and semduramycin sodium

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition<sup>(1)</sup>, and in particular Article 13(3) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) Regulation (EC) No 1831/2003 provides for the possibility to modify the authorisation of a feed additive further to a request from the holder of the authorisation and an opinion of the European Food Safety Authority (the Authority).
- (3) The use of the micro-organism preparation of *Bacillus subtilis* DSM 17299 was authorised for 10 years for chickens for fattening by Commission Regulation (EC) No 1137/2007 of 1 October 2007 concerning the authorisation of *Bacillus subtilis* (O35) as a feed additive<sup>(2)</sup>.
- (4) The holder of the authorisation submitted an application for a modification of the authorisation of this additive to allow its use in feed containing the coccidiostats lasalocid sodium, maduramycin ammonium, monensin sodium, narasin, salinomycin sodium and semduramycin sodium for chickens for fattening. The holder of the authorisation submitted the relevant data to support its request.
- (5) The Authority concluded in its opinion of 10 March 2010 that the additive *Bacillus subtilis* DSM 17299 is compatible with lasalocid sodium, maduramycin ammonium, monensin sodium, narasin, salinomycin sodium and semduramycin sodium<sup>(3)</sup>.
- (6) The conditions provided for in Article 5 of Regulation (EC) No 1831/2003 are satisfied.
- (7) Regulation (EC) No 1137/2007 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

## Article 1

The Annex to Regulation (EC) No 1137/2007 is replaced by the text in the Annex to this Regulation.

## Article 2

This Regulation shall enter into force on the 20th 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, 15 June 2010.

For the Commission  
The President

José Manuel BARROSO

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> OJ L 256, 2.10.2007, p. 5.

<sup>(3)</sup> *The EFSA Journal* 2010; 8(3):1552 [7 pp.].

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			
<b>Category of zootechnical additives. Functional group: gut flora stabilisers</b>									
4b1821	Chr. Hansen A/S	<i>Bacillus subtilis</i> DSM 17299	Additive composition Preparation of <i>Bacillus subtilis</i> DSM 17299 containing a minimum of $1,6 \times 10^9$ CFU/g of additive  Characterisation of the active substance <i>Bacillus subtilis</i> DSM 17299 spore concentrate  Analytical method <sup>(1)</sup>  Enumeration spread plate method using tryptone soya agar with preheat treatment of feed samples	Chickens for fattening	—	$8 \times 10^8$	$1,6 \times 10^9$	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting.  2. The use is permitted in feed containing the permitted coccidiostats: diclazuril, halofuginone, robenidine, decoquinate, narasin/nicarbazin, lasalocid sodium, maduramycin ammonium, monensin sodium, narasin, salinomycin sodium or semduramycin sodium.	22.10.2017

<sup>(1)</sup> Details of the analytical methods are available at the following address of the Community Reference Laboratory: [www.irmm.jrc.be/crl-feed-additives](http://www.irmm.jrc.be/crl-feed-additives).

**COMMISSION REGULATION (EU) No 516/2010**  
**of 15 June 2010**  
**concerning the permanent authorisation of an additive in feedingstuffs**  
**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs<sup>(1)</sup>, and in particular Article 3 and Article 9d(1) thereof,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition<sup>(2)</sup>, and in particular Article 25 thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition.
- (2) Article 25 of Regulation (EC) No 1831/2003 lays down transitional measures for applications for the authorisation of feed additives submitted in accordance with Directive 70/524/EEC before the date of application of Regulation (EC) No 1831/2003.
- (3) The application for authorisation of the additive set out in the Annex to this Regulation was submitted before the date of application of Regulation (EC) No 1831/2003.
- (4) Initial comments on that application, as provided for in Article 4(4) of Directive 70/524/EEC, were forwarded to the Commission before the date of application of Regulation (EC) No 1831/2003. This application is therefore to continue to be treated in accordance with Article 4 of Directive 70/524/EEC.
- (5) The use of the enzyme preparation of endo-1,3(4)-beta-glucanase produced by *Aspergillus aculeatus* (CBS 589.94),

endo-1,4-beta-glucanase produced by *Trichoderma longibrachiatum* (CBS 592.94), alpha-amylase produced by *Bacillus amyloliquefaciens* (DSM 9553) and endo-1,4-beta-xylanase produced by *Trichoderma viride* (NIBH FERM BP 4842) was provisionally authorised for laying hens by Commission Regulation (EC) No 1458/2005<sup>(3)</sup>. It was authorised without a time limit for chickens for fattening by Commission Regulation (EC) No 358/2005<sup>(4)</sup> and for turkeys for fattening by Commission Regulation (EC) No 1284/2006<sup>(5)</sup>.

- (6) New data were submitted in support of an application for authorisation without a time limit of that enzyme preparation for laying hens.
- (7) The assessment shows that the conditions laid down in Article 3a of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that enzyme preparation, as specified in the Annex to this Regulation, should be authorised without a time limit.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

*Article 1*

The preparation belonging to the group 'Enzymes', as specified in the Annex, is authorised without a time limit as additive in animal nutrition under the conditions laid down in that Annex.

*Article 2*

This Regulation shall enter into force on the 20th 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, 15 June 2010.

For the Commission  
The President  
José Manuel BARROSO

<sup>(1)</sup> OJ L 270, 14.12.1970, p. 1.

<sup>(2)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(3)</sup> OJ L 233, 9.9.2005, p. 3.

<sup>(4)</sup> OJ L 57, 3.3.2005, p. 3.

<sup>(5)</sup> OJ L 235, 30.8.2006, p. 3.



## ANNEX

EC No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					Units of activity/kg of complete feedingstuff			
<b>Enzymes</b>								
E 1621	Endo-1,3(4)-beta-glucanase EC 3.2.1.6	Preparation of: endo-1,3(4)-beta-glucanase produced by <i>Aspergillus aculeatus</i> (CBS 589.94), endo-1,4-beta-glucanase produced by <i>Trichoderma longibrachiatum</i> (CBS 592.94), alpha-amylase produced by <i>Bacillus amyloliquefaciens</i> (DSM 9553) and endo-1,4-beta-xylanase produced by <i>Trichoderma viride</i> (NIBH FERM BP4842) having a minimum activity of: Endo-1,3(4)-beta-glucanase: 10 000 U <sup>(1)</sup> /g, Endo-1,4-beta-glucanase: 120 000 U <sup>(2)</sup> /g, alpha-amylase: 400 U <sup>(3)</sup> /g, Endo-1,4-beta-xylanase: 210 000 U <sup>(4)</sup> /g.	Laying hens	—	endo-1,3(4)-beta-glucanase 500 U		1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting.  2. Recommended dose per kg of complete feedingstuff: endo-1,3(4)-beta-glucanase: 500-1 500 U endo-1,4-beta-glucanase: 6 000-18 000 U alpha-amylase: 20-60 U endo-1,4-beta-xylanase: 10 500-31 500 U.  3. For use in compound feed rich in non-starch polysaccharides, (mainly betaglucans and arabinoxylans), e.g. containing 30-50 % wheat.	Without a time limit.
	endo-1,4-beta-glucanase 6 000 U							
	alpha-amylase 20 U							
	endo-1,4-beta-xylanase 10 500 U							

<sup>(1)</sup> 1 U is the amount of enzyme which liberates 0,0056 micromoles of reducing sugars (glucose equivalents) from barley beta-glucan per minute at pH 7,5 and 30 °C.  
<sup>(2)</sup> 1 U is the amount of enzyme which liberates 0,0056 micromoles of reducing sugars (glucose equivalents) from carboxymethylcellulose per minute at pH 4,8 and 50 °C.  
<sup>(3)</sup> 1 U is the amount of enzyme which hydrolyses 1 micromole of glucosidic linkages from water insoluble cross-linked starch polymer per minute at pH 7,5 and 37 °C.  
<sup>(4)</sup> 1 U is the amount of enzyme which liberates 0,0067 micromoles of reducing sugars (xylose equivalents) from birchwood xylan per minute at pH 5,3 and 50 °C.

**COMMISSION REGULATION (EU) No 517/2010****of 15 June 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>,Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector <sup>(2)</sup>, and in particular Article 138(1) thereof,

Whereas:

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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 16 June 2010.

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

Done at Brussels, 15 June 2010.

*For the Commission,  
On behalf of the President,  
Jean-Luc DEMARTY  
Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 350, 31.12.2007, p. 1.

## ANNEX

**Standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	IL	132,1
	MA	44,4
	MK	40,5
	TR	62,0
	ZZ	69,8
0707 00 05	MA	37,3
	MK	45,6
	TR	109,4
	ZZ	64,1
0709 90 70	MA	68,1
	TR	102,6
	ZZ	85,4
0805 50 10	AR	95,1
	BR	112,1
	TR	100,7
	US	83,2
	ZA	104,7
	ZZ	99,2
0808 10 80	AR	95,7
	BR	81,6
	CA	72,1
	CL	90,6
	CN	86,3
	NZ	119,2
	US	124,1
	UY	123,8
	ZA	96,4
	ZZ	98,9
0809 10 00	TN	380,0
	TR	201,6
	ZZ	290,8
0809 20 95	SY	245,9
	TR	355,9
	US	576,0
	ZZ	392,6
0809 30	TR	158,2
	ZZ	158,2

<sup>(1)</sup> Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

**COMMISSION REGULATION (EU) No 518/2010****of 15 June 2010****fixing the import duties in the cereals sector applicable from 16 June 2010**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector <sup>(2)</sup>, and in particular Article 2(1) thereof,

Whereas:

(1) Article 136(1) of Regulation (EC) No 1234/2007 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Article 136(2) of Regulation (EC) No 1234/2007 lays down that, for the purposes of calculating the import duty referred to in paragraph 1 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

(3) Under Article 2(2) of Regulation (EC) No 1249/96, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 4 of that Regulation.

(4) Import duties should be fixed for the period from 16 June 2010 and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

*Article 1*

From 16 June 2010, the import duties in the cereals sector referred to in Article 136(1) of Regulation (EC) No 1234/2007 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

*Article 2*

This Regulation shall enter into force on 16 June 2010.

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

Done at Brussels, 15 June 2010.

*For the Commission,  
On behalf of the President,*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 161, 29.6.1996, p. 125.

## ANNEX I

**Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 16 June 2010**

CN code	Description	Import duties <sup>(1)</sup> (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	13,25
1005 10 90	Maize seed other than hybrid	4,54
1005 90 00	Maize, other than seed <sup>(2)</sup>	4,54
1007 00 90	Grain sorghum other than hybrids for sowing	13,25

<sup>(1)</sup> For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or on the Black Sea,
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

<sup>(2)</sup> The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

## ANNEX II

## Factors for calculating the duties laid down in Annex I

1.6.2010-14.6.2010

## 1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

(EUR/t)

	Common wheat <sup>(1)</sup>	Maize	Durum wheat, high quality	Durum wheat, medium quality <sup>(2)</sup>	Durum wheat, low quality <sup>(3)</sup>	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	164,76	112,20	—	—	—	—
Fob price USA	—	—	140,18	130,18	110,18	86,45
Gulf of Mexico premium	—	14,77	—	—	—	—
Great Lakes premium	40,56	—	—	—	—	—

<sup>(1)</sup> Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

<sup>(2)</sup> Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

<sup>(3)</sup> Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

## 2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight costs: Gulf of Mexico–Rotterdam: 30,51 EUR/t

Freight costs: Great Lakes–Rotterdam: 62,32 EUR/t

# DECISIONS

## COMMISSION DECISION

of 14 June 2010

**amending Decision 2004/211/EC as regards the entries for Bahrain and Brazil in the list of third countries and parts thereof from which the introduction into the European Union of live equidae and semen, ova and embryos of the equine species are authorised**

(notified under document C(2010) 3665)

(Text with EEA relevance)

(2010/333/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae<sup>(1)</sup>, and in particular Article 12(1) and (4), and the introductory phrase of Article 19 and Article 19(i) and (ii) thereof,

Having regard to Council Directive 92/65/EEC of 13 July 1992, laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(l) to Directive 90/425/EEC<sup>(2)</sup>, and in particular Article 17(3)(a) thereof,

Whereas:

- (1) Directive 90/426/EEC lays down animal health conditions for the importation into the Union of live equidae. It provides that imports of equidae into the Union are only authorised from third countries or parts of the territory thereof, which have been free from glanders for a period of at least 6 months.
- (2) Commission Decision 2004/211/EC of 6 January 2004 establishing the list of third countries and parts of territory thereof from which Member States authorise imports of live equidae and semen, ova and embryos

of the equine species<sup>(3)</sup> establishes a list of third countries, or parts thereof where regionalisation applies, from which Member States authorise the importation of equidae and semen, ova and embryos thereof, and indicates the other conditions applicable to such imports. That list is set out in Annex I to that Decision.

- (3) Glanders occurs in parts of the territory of Brazil and therefore imports of equidae, and, as a consequence, of their semen, ova and embryos, are only authorised from the disease-free parts of the territory of that third country listed in column 4 of Annex I to Decision 2004/211/EC. The State of Goiás is listed in that column. The Distrito Federal is a distinct administrative entity situated within the State of Goiás. From an epidemiological point of view it has been considered part of the State of Goiás and not been specifically mentioned in that column.
- (4) In April 2010 Brazil notified the World Organisation for Animal Health (OIE) of the confirmation of a case of glanders in a horse in Distrito Federal. Since Distrito Federal is no longer free from glanders, Annex I to Decision 2004/211/EC should be amended in order to indicate that the introduction into the Union of equidae and of semen, ova and embryos of animals of the equine species are no longer authorised from that region.
- (5) In addition, the Commission has received a report about confirmed cases of glanders in Bahrain. The introduction of registered horses and of semen thereof from Bahrain should therefore no longer be authorised.
- (6) Decision 2004/211/EC should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee of the Food Chain and Animal Health,

<sup>(1)</sup> OJ L 224, 18.8.1990, p. 42.

<sup>(2)</sup> OJ L 268, 14.9.1992, p. 54.

<sup>(3)</sup> OJ L 73, 11.3.2004, p. 1.

HAS ADOPTED THIS DECISION:

*Article 1*

Annex I to Decision 2004/211/EC is amended as follows:

1. the entry for Bahrain is replaced by the following:

'BH	Bahrain	BH-0	Whole country	E	-	-	-	-	-	-	-	-	-	-	-
-----	---------	------	---------------	---	---	---	---	---	---	---	---	---	---	---	---

2. the entry for Brazil is replaced by the following:

'BR	Brazil	BR-0	Whole country		-	-	-	-	-	-	-	-	-	-	-	
		BR-1	The States of: Rio Grande do Sul, Santa Catarina, Paraná, São Paulo, Mato Grosso do Sul, Goiás, Minas Gerais, Rio de Janeiro, Espírito Santo, Rondônia, Mato Grosso	D	X	X	X	X	X	X	X	X	X	X	X	X
		BR-2	Distrito Federal	D	-	-	-	-	-	-	-	-	-	-	-	-

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 14 June 2010.

*For the Commission*  
John DALLI  
*Member of the Commission*









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