

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.2.2008
COM(2008) 87 final

Proposal for a

COUNCIL REGULATION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 23.12.2005 ('the basic Regulation') in the proceeding concerning imports of urea originating in Belarus, Croatia, Libya and Ukraine.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 92/2002 imposing definitive anti-dumping duties ranging from EUR 7,81 to EUR 16,84 per tonne on imports of urea falling within CN codes 3102 10 10 and 3102 10 90 originating in Belarus, Croatia, Libya and Ukraine.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the opportunity to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 22 December 2006, the Commission initiated an expiry review of the anti-dumping measures in force in respect of imports of urea originating in Belarus, Croatia, Libya

and Ukraine.

The purpose of this investigation was to examine whether there is continuation or recurrence of dumping regarding imports of urea originating in Belarus, Croatia, Libya and Ukraine, thereby causing a continuation or recurrence of injury to the Community industry.

The investigation showed that imports of urea originating in Belarus, Croatia, Libya and Ukraine were dumped and that there was a likelihood of continuation of dumping. Nevertheless, no likelihood of recurrence of injury was established. It is therefore concluded that anti-dumping measures have to be repealed on imports from Belarus, Croatia, Libya and Ukraine.

It is therefore proposed that the Council adopts the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* by 21 March 2008 at the latest.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Measures in force

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

2. Request for review

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

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

2 OJ L 17, 19.1.2002, p.1

3 OJ C 93, 21.4.2006, p.6

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

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

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

3. Investigations concerning other countries

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

4. Current investigation

4.1. Investigation period

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

4.2. Parties concerned by the investigation

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

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

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

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4 OJ C 316, 22.12.2006, p. 13.
5 OJ C 105, 4.5.2006, p. 12.
6 OJ L 127, 9.5.2001, p. 11.
7 OJ L 198, 31.7.2007, p. 4.

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

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

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

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

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

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

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

(a) Sampled Community producers:

– Fertiberia S.A., Madrid, Spain

– SKW Stickstoffwerke Piesteritz GmbH , Lutherstadt Wittenberg, Germany

– Yara Group (Yara Spa Ferrara, Italy and Yara Sluiskil B.V., Sluiskil, The Netherlands);

– Zaklady Azotowe Pulawy S.A., Pulawy, Poland

(b) Exporting producers

– Ukraine:

  – Joint Stock Company Concern Stirol, Gorlovka,

  – Close Joint Stock Company Severodonetsk, Severodonetsk,

  – Joint Stock Company Dnipro Azot, Dneprodzerzhinsk,

  – Open Joint Stock Company Cherkassy Azot, Cherkassy

– Croatia:

  – Petrokemija D.D., Kutina

(c) Community importers

  – Dynea Austria GmbH , Krems, Austria

(d) Community users

  – Associazione Liberi Agricoltori Cremonesi, Cremona, Italy

  – Acefer, Asociación Comercial Española de Fertilizantes, Madrid , Spain

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

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

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

2. Like product

(20) As established in the original investigation, this review investigation has confirmed that the products manufactured and exported by the exporting producers in Belarus, Croatia, Libya and Ukraine, those manufactured and sold on the domestic market of these countries, as well as those manufactured and sold by the Community producers on the Community market all have the same basic physical, chemical and technical

characteristics and essentially the same uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

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

1. Dumping of imports during the review investigation period

1.1 General principles

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

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

1.2 Croatia

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

(25) Croatia exported more than 200 000 tons of urea to the Community during the RIP, capturing 2.3% of the Community market. The sole known and co-operating exporting producer was still found to export at significantly dumped prices to the Community, as far as the RIP is concerned. The dumping margin found exceeded 20%.

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

1.3 Belarus, Libya and Ukraine

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

2. Likelihood of Recurrence of Dumping

2.1 Belarus

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

(29) The sole known Belorussian producer filed a questionnaire reply. Overall, Belarus exported about 25,000 tons urea, which amounts to a Community market share of 0.3%. Given such low market share, the analysis in regard of Belarus concentrates on the likelihood of recurrence of dumping.

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

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

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

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

2.2 Croatia

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

(35) In addition, it was examined whether Croatian export prices would be dumped if they were made at levels which would be equal to the current price levels prevailing in the Community. Indeed, for a commodity product such as urea, it would be unlikely to sell

at levels above current market prices. The result of this analysis also led to significant dumping margins.

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

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

2.3 Libya

(38) The sole known exporting producer filed a questionnaire response that was incomplete. Since it failed to submit some of the missing information, recourse to Article 18 of the basic Regulation had to be made, where appropriate. Available information showed that overall, Libya exported about 70 000 tons of urea to the Community during the RIP, which amounts to a Community market share of 0.8%. Given this low market share, the analysis with regard to Libya concentrates on the likelihood of recurrence of dumping. The analysis on dumping and likelihood of recurrence of dumping was done on the basis of the information available.

(39) In the absence of representative domestic sales on the Libyan market, normal value was established on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, in accordance with Article 2.3 of the basic Regulation. A margin of profit of 8 % was found to be reasonable in this case.

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

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

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

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

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

2.4 Ukraine

(45) Four producers co-operated with the investigation. Only two of them made export sales to the Community during the RIP. Overall, Ukraine exported only about 20,000 tons of urea, which amounts to a Community market share of 0.2%. Given this low market share, the analysis with regard to Ukraine concentrates on the likelihood of recurrence of dumping.

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

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

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

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

3. Development of imports should measures be repealed

3.1 Belarus

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

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

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

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

3.2 Croatia

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

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

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

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

3.3 Libya

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

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

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

3.4 Ukraine

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

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

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

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

D.DEFINITION OF COMMUNITY INDUSTRY

1. Definition of Community Production

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

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

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

- Achema AB (Lithuania),
- Adubos de Portugal (Portugal),
- AMI Agrolinz Melamine International GmbH (Austria),
- Duslo AS (Slovak Republic),
- Fertiberia S.A.(Spain),
- AS Nitrofert (Estonia),
- Nitrogénmüvek Zrt (Hungary),
- SKW Stickstoffwerke Piesteritz (Germany),
- Yara Group (consolidation of Yara France SA (France), Yara Italia Spa (Italy), Yara Brunsbuttel GmbH (Germany) and Yara Sluiskil BV (The Netherlands)
- Zaklady Azotowe Pulawy (Poland),
- ZAK SA (Poland),
- BASF GmbH (Germany).

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

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

E. SITUATION IN THE COMMUNITY MARKET

1. Consumption in the Community market

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

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

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

2. Imports from the countries concerned

2.1. Volume, market share and prices of imports

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

	2002	2003	2004	2005	RIP
Belarus – Volume of imports (tonnes)	134.931	167.981	62.546	62.044	25.193
Market share	1,6%	1,9%	0,7%	0,7%	0,3%
Prices of imports (EUR/tonne)	107,5	126,6	148,5	165,7	190,5
Index (2002=100)	*100*	*118*	*138*	*154*	*177*
Ukraine *– Volume of imports (tonnes)*	*44.945*	*36.304*	*77.270*	*84.338*	*52.553*
Market share	*0,5%*	*0,4%*	*0,8%*	*0,9%*	*0,5%*
Prices of imports (EUR/tonne)	*117,4*	*134,5*	*139,6*	*192,7*	*194,0*
Index (2002=100)	*100*	*115*	*119*	*164*	*165*
Croatia *– Volume of imports (tonnes)*	*126.400*	*179.325*	*205.921*	*187.765*	*208.050*
Market share	*1,5%*	*2,0%*	*2,3%*	*2,1%*	*2,3%*
Prices of imports (EUR/tonne)	*125,1*	*135,0*	*145,0*	*171,7*	*185,0*
Index (2002=100)	*100*	*108*	*116*	*137*	*148*
Libya *– Volume of imports (tonnes)*	*142.644*	*227.793*	*153.390*	*124.515*	*73.361*
Market share	*1,6%*	*2,5%*	*1,7%*	*1,4%*	*0,8%*
Prices of imports (EUR/tonne)	*114,1*	*134,9*	*147,2*	*193,8*	*201,6*
Index (2002=100)	*100*	*118*	*129*	*170*	*177*

(72) With respect to **Belarus**, the volume of imports increased slightly between 2002 and 2003, then constantly decreased throughout the period considered (-81% for the whole period). Similarly, its market share slightly increased between 2002 and 2003 then dropped continuously, falling at 0.3% in the RIP. The volumes were *de minimis* from 2004 onwards. The prices evolved positively from 107 to 190 EUR/tonne during the period considered.

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

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

(75) Imports from **Libya** increased in 2003 but then dropped constantly until the end of the RIP. During the whole period they decreased by 49% and their market share passed from 1.6% in 2002 to 0.8% in the RIP. As with the other countries concerned, Libyan import prices increased, by 77% between 2002 and the RIP.

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

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

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

3. Imports from other countries

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

	2002	2003	2004	2005	RIP
Volume of imports from Russia (tonnes)	1 360 025	1 429 543	1 783 742	1 404 863	1 488 367
Market share	15,7%	16,0%	19,9%	15,8%	16,6%
Prices of imports from Russia (EUR/tonne)	119	133	154	180	196
Volume of imports from Egypt (tonnes)	579 830	629 801	422 892	385 855	624 718
Market share	6,7%	7,0%	4,7%	4,3%	7,0%
Prices of imports from Egypt (EUR/tonne)	149	163	178	220	222
Volume of imports from Romania	260 298	398 606	235 417	309 195	248 377
Market share	3,0%	4,5%	2,6%	3,5%	2,8%
Prices of imports from Romania (EUR/tonne)	123	142	175	197	210
Volume of imports from all other	373.732	291.620	254.311	336.110	326.579
Market share	4,3%	3,3%	2,8%	3,8%	3,6%
Prices of imports from all other countries	141	170	194	221	224
Market share all third countries	29,7%	30,8%	30,0%	27,4%	30,0%

(80) It should be noted that the overall imports from third countries increased by 4,4% during the whole period. This result is mainly due to the increase of imports from Russia (+9,4%), which is the main exporter by far. It should also be noted that imports from Russia were subject to measures in the form of a MIP during the whole period, measures repealed by Council Regulation (EC) 907/2007[8] (see recital (6) *supra*). Between 2002 and the RIP imports from Egypt increased by 7.7% while imports from other third countries decreased in the same range, Romania accounting for more than 40% of these imports. As for the export prices, all the above countries have exported to the Community at prices which do not undercut the Community industry's prices in the RIP and/or are above the non-injurious price of the Community industry

4. Economic situation of the Community industry

[8] OJ L 198, 31.7.2007, p. 4.

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

4.1. Preliminary remarks

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

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

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

4.2. Data relating to the Community industry as a whole

(a) Production

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

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

Source: Complainants, sampling questionnaire replies and verified questionnaire replies

(b) Capacity and capacity utilisation rates

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

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

(c) Stocks

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

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

(d) Sales volume

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

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

(e) Market share

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

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

(f) Growth

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

(g) Employment

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

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

(h) Productivity

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

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

(i) Magnitude of dumping margin

(93) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping in the RIP, given the fact that (i) the volume of imports from Belarus, Ukraine and Libya, were below *de minimis* levels; ii) imports from Croatia were stable, at prices increased in line with EU sales prices; and (iii) the overall

financial situation of the Community industry was very positive, this impact is considered not to be significant and the indicator not meaningful.

(j) Recovery from the effects of past dumping

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

4.3. Data relating to the sampled Community producers

(a) Sales prices and factors affecting domestic prices

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

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

(b) Wages

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

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

(c) Investments

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

	2002	2003	2004	2005	RIP
S.P. Net investments (000 EUR)	20 493	11 095	31 559	40 001	35 565

Index (2002 = 100)	*100*	*54*	*154*	*195*	*174*

(d) Profitability and return on investments

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

	2002	2003	2004	2005	RIP
S.P. Profitability of EC sales to unrelated customers (% of net sales)	4,6%	11,1%	18,4%	19,3%	10,7%
Index (2002 = 100)	*100*	*241*	*400*	*419*	*233*
S.P. ROI (profit in % of net book value of investment)	10,7%	31,0%	48,8%	51,1%	29,4%
Index (2002 = 100)	*100*	*290*	*456*	*477*	*275*

(e) Cash-flow and ability to raise capital

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

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

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

5. Conclusion

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

(102) Almost all other injury indicators, with the exception of the increase of stock volumes, developed positively: production volume and unit sales prices of the Community

industry increased and profitability was, after 2002, significantly above the level of profit set as a target profit in the original investigation.

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

(104) The applicant claimed that the long term profitability requirements, measured as a return on sales, for the urea industry should be at the level of 25% after tax. This would mean around 36% pre-tax profit on turnover. The applicant claimed that this is justified by the cost of establishing a new ammonia/urea plant, which would require a return on investment of 11% (allegedly equivalent to the 36% pre-tax profit on turnover). To this purpose, it is noted that the applicant never claimed such a high target profit in this proceeding and in the original investigation a profit margin of 8% that may be reached in the absence of injurious dumping was established. Moreover, the Court of First Instance, in its judgement in Case T-210/95, confirmed that '…the profit margin to be used by the Council when calculating the target price that will remove the injury in question must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports.' [9] In the same case, it was confirmed that '…(an) argument that the profit margin which is to be used by the Community institutions must be the margin necessary to ensure the survival of the Community industry and/or an adequate return on capital, has no basis whatever in the basic regulation.'

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

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

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

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. General

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

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

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

2. Possible export volumes and prices of the countries concerned

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

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

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

(112) The urea market is forecast to grow significantly in the coming years both in the Community [10]and worldwide, mainly due to increased agricultural production (for biofuel applications) and also due to expanding industrial use for AdBlue[11]. As an example, prospects for agricultural markets in the European Union 2007-2014 released by Directorate-General for Agriculture in July 2007 confirm that cereals production will likely increase by up to 20% in this period. The applicant own evaluation suggests a 10% growth. Moreover, end September 2007, Council Regulation (EC) No 1107/2007 [12] established to derogate from set-aside lands for the year 2008. The foreseen Community market growth (around 1 million additional tonnes) is likely to exceed the *maximum* likely volumes that the exporting countries could export to the Community. Therefore, no major volume imbalances would be likely to emanate from these additional exports, not least because the gap between maximum potential Community production and consumption is quantified at roughly 2 million tonnes, and there is no indication that this gap would be filled by other exports (*i.a.* originating in

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

[11] AdBlue is a registered trademark for an Aqueous Urea Solution (32.5%) and is used in a process called Selective Catalytic Reduction to reduce emissions of oxides of nitrogen from the exhaust of diesel vehicles.

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

Russia, as described in Council Regulation (EC) No 907/2007) to an extent that oversupply would suppress or depress market prices.

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

4. Conclusion on likelihood of recurrence of injury

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

H. ANTI-DUMPING MEASURES

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, […]

For the Council
The President
[…]