COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

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 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of solutions of urea and ammonium nitrate originating in Russia.

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

The measures currently in force were imposed by Council Regulation (EC) No 1995/2000 and confirmed by Council Regulation (EC) No 1911/2006 imposing a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate originating, *inter alia,* in Russia.

Consistency with the other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility 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.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 19 December 2006, the Commission initiated an interim review of the measures in

force in respect of solutions of urea and ammonium nitrate originating in Russia further to a request made by two related exporting producers in Russia, belonging to the Joint Stock Company "Mineral and Chemical Company Eurochem". The request was based on prima facie evidence that the circumstances on the basis of which measures were established have changed and therefore the continued imposition of measures at the existing levels would no longer be necessary to offset dumping.

The attached proposal for a Council Regulation is based on the findings of the investigation carried out which is limited in scope to the examination of dumping as far as the applicant is concerned.

The investigation showed that dumping took place during the investigation period. The level of the dumping found was higher than the one during the investigation period which led to the imposition of the definitive duties. It was also higher than the injury elimination level which forms the basis of the current measures in force. Therefore, no circumstances have changed in such a way as to no longer render necessary the existing measures to offset dumping. It was also found that the circumstances during the current investigation period were of a lasting nature.

It is therefore proposed that the Council adopt the attached proposal for a Regulation that would terminate the review without amending the anti-dumping measures currently in force, which should be published in the Official Journal no later than 18 March 2008.

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 of 21 December 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 for the following reason: The above-mentioned

basic Regulation does not foresee alternative options.

BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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Proposal for a

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. MEASURES IN FORCE

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

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

2. REQUEST FOR A REVIEW

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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 238, 22.9.2000, p. 15.

3 OJ L 365, 21.12.2006, p. 26.

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

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

3. INVESTIGATION

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

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

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

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

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

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

- JSC Mineral and Chemical Company (Eurochem), Moscow, Russia;
- PJSC Azot (NAK Azot), Novomoskovsk, Russia;
- PJSC Nevinnomyssky Azot (Nevinka Azot), Nevinnomyssk, Russia and
- Eurochem Trading GmbH, Zug, Switzerland – (Eurochem Trading).

[4] OJ C 311, 19.12.2006, p. 51.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

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

2. LIKE PRODUCT

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

C. RESULTS OF THE INVESTIGATION

1. PRELIMINARY REMARKS

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

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

(15) It should be noted that the measures currently applicable are partly based on data not linked to the applicant's own production and sales of the product concerned, while during the current RIP verified information related to the applicant's own data

pertaining to the normal value and export prices, albeit to a third country market, was available. On this basis, it was concluded that the dumping margin found during the current RIP reflected more accurately the situation of the applicant during the RIP than the measures currently in force.

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

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

2. NORMAL VALUE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

including the export tax, and not the price before that tax, is the undistorted market driven price. Consequently, the arguments of the applicant in this regard were rejected.

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

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

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

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

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

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

(41) SG&A costs and profit could not be established on the basis of the chapeau of Article 2(6), first sentence, of the basic Regulation because, after the adjustment for the gas cost mentioned in recital (22), the applicant did not have representative domestic sales

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

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

3. EXPORT PRICE

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

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

(45) Since export sales of the applicant to the USA during the RIP were made via a related trader located in Switzerland, the export price had to be established in accordance with Article 2(9) of the basic Regulation. Thus, the export price was constructed on the basis of prices actually paid or payable to the applicant by the first independent

customer in the USA, its major export market. A notional commission corresponding to the mark-up of the related trader, which can be considered similar to the role of an agent acting on a commission basis was deducted from these prices.

4. COMPARISON

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

5. DUMPING MARGIN

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

(48) This comparison showed a dumping margin of 31,59%, expressed as a percentage of the CIF North American frontier price, duty unpaid.

6. LASTING NATURE OF THE CIRCUMSTANCES PREVAILING DURING THE RIP

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

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

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

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

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

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

in recitals (55) and (56), the definitive anti-dumping duties were imposed at the level of the injury elimination level as found during the original investigation.

D. TERMINATION OF THE REVIEW

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

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

E. UNDERTAKINGS

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

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

F. DISCLOSURE

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

HAS ADOPTED THIS REGULATION:

Sole Article

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

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

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

Done at Brussels, […]

For the Council
The President
[…]