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⁽¹⁾ Text with EEA relevance.

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⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2095

of 9 December 2020

approving non-minor amendments to the product specification for a name entered in the register of protected designations of origin and protected geographical indications [‘Aceite de la Comunitat Valenciana’ (PDO)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Spain’s application for the approval of amendments to the product specification for the protected designation of origin ‘Aceite de la Comunitat Valenciana’, registered under Commission Implementing Regulation (EU) No 309/2014 ⁽²⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the product specification published in the *Official Journal of the European Union* regarding the name ‘Aceite de la Comunitat Valenciana’ (PDO) are hereby approved.

Article 2

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

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 309/2014 of 20 March 2014 entering a name in the register of protected designations of origin and protected geographical indications [‘Aceite de la Comunitat Valenciana (PDO)’] (OJ L 91, 27.3.2014, p. 9).

⁽³⁾ OJ C 263, 11.8.2020, p. 6.

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

Done at Brussels, 9 December 2020.

*For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission*

COMMISSION REGULATION (EU) 2020/2096**of 15 December 2020**

amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as regards carcinogenic, mutagenic or reproductive toxicant (CMR) substances, devices covered by Regulation (EU) 2017/745 of the European Parliament and of the Council, persistent organic pollutants, certain liquid substances or mixtures, nonylphenol and testing methods for azocolourants

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ⁽¹⁾, and in particular Articles 68(2) and 131 thereof,

Whereas:

- (1) Entry 3 of Annex XVII to Regulation (EC) No 1907/2006 contains several references to labelling with R65, which is one of the standard 'R-phrases', indicating special risks arising from the dangers associated with using the substance that were set out in Council Directive 67/548/EEC ⁽²⁾. As that Directive has been repealed, the references to R65 should be deleted from entry 3.
- (2) Pursuant to paragraph 6 of entry 3 of Annex XVII to Regulation (EC) No 1907/2006, on 8 July 2015 the European Chemicals Agency prepared a dossier in accordance with Article 69 of that Regulation and concluded that there is no need to propose an amendment of the restriction set out in that entry. Accordingly, paragraphs 6 and 7 of entry 3 have become superfluous and should be deleted.
- (3) Entries 22, 67 and 68 of Annex XVII to Regulation (EC) No 1907/2006 lay down restrictions as regards pentachlorophenol and its salts and esters, bis(pentabromophenyl)ether and perfluorooctanoic acid and its salts. As more severe restrictions are laid down for those substances in Regulation (EU) 2019/1021 of the European Parliament and of the Council ⁽³⁾, entries 22, 67 and 68 of Annex XVII to Regulation (EC) No 1907/2006 should be deleted.
- (4) Entry 46 of Annex XVII to Regulation (EC) No 1907/2006, as first included in Regulation (EC) No 1907/2006, contained no CAS or EC numbers for nonylphenol. Commission Regulation (EC) No 552/2009 ⁽⁴⁾ added a CAS number and an EC number to that entry, with the intention of clarifying it and allowing operators and enforcement authorities to apply it correctly. That addition however had the unintended effect that not all isomers of nonylphenol are now covered by entry 46. The intention of the legislator at the time of adoption of the restriction should therefore be reflected by deleting those numbers.

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽²⁾ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ L 196, 16.8.1967, p. 1).

⁽³⁾ Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

⁽⁴⁾ Commission Regulation (EC) No 552/2009 of 22 June 2009 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XVII (OJ L 164, 26.6.2009, p. 7).

- (5) Entries 28, 29 and 30 of Annex XVII to Regulation (EC) No 1907/2006 prohibit the placing on the market and use, for supply to the general public, of substances that are classified as carcinogenic, mutagenic or reproductive toxicant (CMR), categories 1A or 1B, and listed in Appendices 1 to 6 to that Annex and of mixtures containing such substances above specified concentrations.
- (6) Substances classified as CMR are listed in Part 3 of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council ⁽⁵⁾.
- (7) After the last amendment to Appendices 1 to 6 to Annex XVII to Regulation (EC) No 1907/2006 by Commission Regulation (EU) 2018/675 ⁽⁶⁾ to take into account new classifications of substances as CMR under Regulation (EC) No 1272/2008, Part 3 of Annex VI to Regulation (EC) No 1272/2008 has been amended by Commission Regulation (EU) 2018/1480 ⁽⁷⁾ and by Commission Delegated Regulation (EU) 2020/217 ⁽⁸⁾. It is appropriate to add the newly classified CMR substances of categories 1A or 1B listed in Regulations (EU) 2018/1480 and (EU) 2020/217 to Appendices 1 to 6 to Annex XVII to Regulation (EC) No 1907/2006.
- (8) Regulation (EU) 2017/745 of the European Parliament and of the Council ⁽⁹⁾ lays down rules concerning the placing on the market, making available on the market or putting into service of medical devices for human use, accessories for such devices and certain groups of products without an intended medical purpose. As Regulation (EU) 2017/745 contains provisions on CMR substances, and to avoid double regulation, devices within the scope of Regulation (EU) 2017/745 should be exempted from the restrictions laid down in entries 28-30 of Annex XVII to Regulation (EC) No 1907/2006.
- (9) Deletion of entry 68 of Annex XVII to Regulation (EC) No 1907/2006 should apply from the date of application of the relevant provision of Commission Delegated Regulation (EU) 2020/784 ⁽¹⁰⁾, including perfluorooctanoic acid and its salts in Annex I to Regulation (EU) 2019/1021.
- (10) The classifications of substances introduced by Regulation (EU) 2018/1480 apply from 1 May 2020. Stakeholders should be allowed sufficient time to take appropriate measures to comply with the restriction introduced by this Regulation as regards substances classified as CMR category 1A or 1B by Regulation (EU) 2018/1480. Six months period should be sufficient. The date of application does not prevent operators from applying the restrictions related to the CMR substances category 1A or 1B classified under Regulation (EU) 2018/1480 earlier.
- (11) Delegated Regulation (EU) 2020/217 will apply from 1 October 2021. The restriction introduced by this Regulation as regards substances classified as CMR category 1A or 1B by Regulation (EU) 2020/217 should therefore apply from 1 October 2021. The date of application does not prevent operators from applying the restrictions related to the CMR substances category 1A or 1B classified under Regulation (EU) 2020/217 earlier.

⁽⁵⁾ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

⁽⁶⁾ Commission Regulation (EU) 2018/675 of 2 May 2018 amending the Appendices to Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards CMR substances (OJ L 114, 4.5.2018, p. 4).

⁽⁷⁾ Commission Regulation (EU) 2018/1480 of 4 October 2018 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures and correcting Commission Regulation (EU) 2017/776 (OJ L 251, 5.10.2018, p. 1).

⁽⁸⁾ Commission Delegated Regulation (EU) 2020/217 of 4 October 2019 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures and correcting that Regulation (OJ L 44, 18.2.2020, p. 1).

⁽⁹⁾ Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).

⁽¹⁰⁾ Commission Delegated Regulation (EU) 2020/784 of 8 April 2020 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council as regards the listing of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds (OJ L 188, 15.6.2020, p. 1).

- (12) Commission Regulation (EU) 2017/776 ⁽¹¹⁾ made changes to titles and numbering in Part 3 of Annex VI to Regulation (EC) No 1272/2008. Corresponding modifications to entries 28, 29 and 30 in column 1 of Annex XVII to Regulation (EC) No 1907/2006 were made by Regulation (EU) 2018/675. Similar changes should be made to the titles of Appendices 1 to 6 to Annex XVII to Regulation (EC) No 1907/2006.
- (13) Appendix 10 to Annex XVII to Regulation (EC) No 1907/2006 lists testing methods for azocolourants for the purposes of entry 43 of that Annex. Several of the listed testing methods are outdated and have been replaced by the European Committee for Standardization with more up-to-date testing methods. Appendix 10 should therefore be amended to reflect those changes.
- (14) Regulation (EC) No 1907/2006 should therefore be amended accordingly.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 133(1) of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1907/2006 is amended in accordance with the Annex to this Regulation.

Article 2

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

Point (6) of the Annex shall apply from 4 July 2020.

Point (8)(b) of the Annex shall apply as follows:

- rows concerning cobalt, benzo[*rst*]pentaphene and dibenzo[*b,def*]chrysene; dibenzo[*a,h*]pyrene shall apply from 1 October 2021,
- rows concerning 1,2-dihydroxybenzene; pyrocatechol, acetaldehyde; ethanal and spirodiclofen (ISO); 3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4.5]dec-3-en-4-yl 2,2-dimethylbutyrate shall apply from 5 July 2021.

Point 11(b) of the Annex shall apply from 1 October 2021.

Point (12)(b) of the Annex shall apply as follows:

- rows concerning cobalt, ethylene oxide; oxirane, ethanol, 2,2'-iminobis-, N-(C13-15 branched and linear alkyl) derivs., diisohexyl phthalate, halosulfuron-methyl (ISO); methyl 3-chloro-5-[[[(4,6dimethoxypyrimidin-2yl)carbamoyl] sulfamoyl]-1-methyl-1H-pyrazole-4-carboxylate, 2-methylimidazole and dibutylbis(pentane-2,4-dionato-O,O')tin shall apply from 1 October 2021,
- rows concerning 2-benzyl-2-dimethylamino-4'-morpholinobutyrophenone, propiconazole (ISO); (2*RS*,4*RS*;2*RS*,4*SR*)-1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and 1-vinylimidazole shall apply from 5 July 2021.

⁽¹¹⁾ Commission Regulation (EU) 2017/776 of 4 May 2017 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ L 116, 5.5.2017, p. 1).

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

Done at Brussels, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Annex XVII to Regulation (EC) No 1907/2006 is amended as follows:

(1) Column 2 of entry 3 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. Shall not be placed on the market if they contain a colouring agent, unless required for fiscal reasons, or perfume, or both, if they:

— can be used as fuel in decorative oil lamps for supply to the general public, and

— present an aspiration hazard and are labelled with H304.’;

(b) paragraph 5 is replaced by the following:

‘5. Without prejudice to the implementation of other Union provisions relating to the classification, labelling and packaging of substances and mixtures, suppliers shall ensure, before the placing on the market, that the following requirements are met:

(a) lamp oils, labelled with H304, intended for supply to the general public are visibly, legibly and indelibly marked as follows: “Keep lamps filled with this liquid out of the reach of children”; and, by 1 December 2010, “Just a sip of lamp oil – or even sucking the wick of lamps – may lead to life-threatening lung damage”;

(b) grill lighter fluids, labelled with H304, intended for supply to the general public are legibly and indelibly marked by 1 December 2010 as follows: ‘Just a sip of grill lighter fluid may lead to life threatening lung damage’;

(c) lamps oils and grill lighters, labelled with H304, intended for supply to the general public are packaged in black opaque containers not exceeding 1 litre by 1 December 2010.’;

(c) paragraph 6 is deleted;

(d) paragraph 7 is deleted.

(2) Entry 22 is deleted.

(3) In entries 28-30, the following point (f) is added in paragraph 2 of column 2:

‘(f) devices covered by Regulation (EU) 2017/745’.

(4) In entry 46, the references to CAS number and EC number in paragraph (a) of column 1 are deleted.

(5) Entry 67 is deleted.

(6) Entry 68 is deleted.

(7) The title of Appendix 1 is replaced by the following:

‘Entry 28 – Carcinogens: Category 1A’.

(8) Appendix 2 is amended as follows:

(a) the title is replaced by the following:

‘Entry 28 – Carcinogens: Category 1 B’;

(b) the following entries are inserted in the table in order of the index numbers set out therein:

‘cobalt	027-001-00-9	231-158-0	7440-48-4’	
‘benzo[<i>rst</i>]pentaphene	601-090-00-X	205-877-5	189-55-9’	
‘dibenzo[<i>b,def</i>]chrysene; dibenzo[<i>a,h</i>]pyrene	601-091-00-5	205-878-0	189-64-0’	
‘1,2-dihydroxybenzene; pyrocatechol	604-016-00-4	204-427-5	120-80-9’	

'acetaldehyde; ethanal	605-003-00-6	200-836-8	75-07-0'	
'spirodiclofen (ISO); 3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4.5]dec-3-en-4-yl 2,2-dimethylbutyrate	607-730-00-4	-	148477-71-8'	

(9) The title of Appendix 3 is replaced by the following:

'Entry 29 – Germ cell mutagens: Category 1 A'.

(10) The title of Appendix 4 is replaced by the following:

'Entry 29 – Germ cell mutagens: Category 1 B'.

(11) Appendix 5 is amended as follows:

(a) the title is replaced by the following:

'Entry 30 – Reproductive toxicants: Category 1 A';

(b) the following entry is inserted in the table in order of the index numbers set out therein:

'methylmercuric chloride	080-012-00-0	204-064-2	115-09-3'	
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(12) Appendix 6 is amended as follows:

(a) the title is replaced by the following:

'Entry 30 – Reproductive toxicants: Category 1 B',

(b) the following entries are inserted in the table in order of the index numbers set out therein:

'cobalt	027-001-00-9	231-158-0	7440-48-4'	
'ethylene oxide; oxirane	603-023-00-X	200-849-9	75-21-8'	
'ethanol, 2,2'-iminobis-, N-(C13-15 branched and linear alkyl) derivs.	603-236-00-8	308-208-6	97925-95-6'	
'2-benzyl-2-dimethylamino-4'-morpholino-butyrophenone	606-047-00-9	404-360-3	119313-12-1'	
'diisohexyl phthalate	607-737-00-2	276-090-2	71850-09-4'	
'propiconazole (ISO); (2RS,4RS;2RS,4SR)-1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole	613-205-00-0	262-104-4	60207-90-1'	
'1-vinylimidazole	613-328-00-X	214-012-0	1072-63-5'	
'halosulfuron-methyl (ISO); methyl 3-chloro-5-[[[4,6dimethoxypyrimidin-2yl]carbamoyl]sulfamoyl]-1-methyl1H-pyrazole-4-carboxylate	613-329-00-5	-	100784-20-1'	
'2-methylimidazole	613-330-00-0	211-765-7	693-98-1'	
'dibutylbis(pentane-2,4-dionato-O,O')tin	650-056-00-0	245-152-0	22673-19-4'	

(13) In Appendix 10, the table is replaced by the following table:

'European standardisation organisation	Reference and title of the harmonised standard	Reference of the superseded standard
CEN	EN ISO 17234-1:2015 Leather – Chemical tests for the determination of certain azo colorants in dyed leathers – Part 1: Determination of certain aromatic amines derived from azo colorants	EN ISO 17234-1:2010
CEN	EN ISO 17234-2:2011 Leather – Chemical tests for the determination of certain azo colorants in dyed leathers – Part 2: Determination of 4-aminoazobenzene	CEN ISO/TS 17234:2003
CEN	EN ISO 14362-1:2017 Textiles – Methods for determination of certain aromatic amines derived from azo colorants – Part 1: Detection of the use of certain azo colorants accessible with and without extracting the fibres	EN 14362-1:2012
CEN	EN ISO 14362-3:2017 Textiles – Methods for determination of certain aromatic amines derived from azo colorants – Part 3: Detection of the use of certain azo colorants, which may release 4-aminoazobenzene	EN 14362-3:2012'

COMMISSION REGULATION (EU) 2020/2097**of 15 December 2020****amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard 4****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾, and in particular Article 3(1) thereof,

Whereas:

- (1) By Commission Regulation (EC) No 1126/2008 ⁽²⁾ certain international accounting standards and interpretations that were in existence on 15 October 2008 were adopted.
- (2) On 25 June 2020, the International Accounting Standards Board published the Extension of the Temporary Exemption from Applying IFRS 9 (amendments to International Financial Reporting Standard (IFRS) 4 *Insurance Contracts*).
- (3) The amendments to IFRS 4 aim to address the temporary accounting consequences of the different effective dates of IFRS 9 *Financial Instruments* and the forthcoming IFRS 17 *Insurance Contracts*. In particular, the amendments to IFRS 4 extend the expiry date of the temporary exemption from applying IFRS 9 until 2023 in order to align the effective date of IFRS 9 with the new IFRS 17.
- (4) Commission Regulation (EU) 2017/1988 ⁽³⁾ set the expiry date of the optional deferral of the application of IFRS 9 for entities that predominantly undertake insurance activities, including the insurance sector of a financial conglomerate falling within the scope of Directive 2002/87/EC of the European Parliament and of the Council ⁽⁴⁾, at 1 January 2021.
- (5) Those entities should be permitted to defer the use of IFRS 9 from 1 January 2021 until 1 January 2023.
- (6) Following consultations with the European Financial Reporting Advisory Group, the Commission concludes that the amendments to IFRS 4 meet the criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002.
- (7) Regulation (EC) No 1126/2008 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

⁽³⁾ Commission Regulation (EU) 2017/1988 of 3 November 2017 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard 4 (OJ L 291, 9.11.2017, p. 72).

⁽⁴⁾ Directive 2002/87/EC of the European Parliament and Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1126/2008, International Financial Reporting Standard (IFRS) 4 *Insurance Contracts* is amended as set out in the Annex to this Regulation.

Article 2

Each company and each financial conglomerate as defined in Article 2 of Regulation (EU) 2017/1988 shall apply the amendments referred to in Article 1 of this Regulation as from 1 January 2021 for financial years starting on or after 1 January 2021.

Article 3

This Regulation shall enter into force on the twentieth 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, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Extension of the Temporary Exemption from Applying IFRS 9

Amendments to IFRS 4

Amendments to IFRS 4 *Insurance Contracts*

Paragraphs 20A, 20J and 20O are amended.

Temporary exemption from IFRS 9

20A IFRS 9 addresses the accounting for financial instruments and is effective for annual periods beginning on or after 1 January 2018. However, for an insurer that meets the criteria in paragraph 20B, this IFRS provides a temporary exemption that permits, but does not require, the insurer to apply IAS 39 *Financial Instruments: Recognition and Measurement* rather than IFRS 9 for annual periods beginning before 1 January 2023. An insurer that applies the temporary exemption from IFRS 9 shall:

(a) ...

...

20J If an entity no longer qualifies for the temporary exemption from IFRS 9 as a result of a reassessment (see paragraph 20G(a)), then the entity is permitted to continue to apply the temporary exemption from IFRS 9 only until the end of the annual period that began immediately after that reassessment. Nevertheless, the entity must apply IFRS 9 for annual periods beginning on or after 1 January 2023. For example, if an entity determines that it no longer qualifies for the temporary exemption from IFRS 9 applying paragraph 20G(a) on 31 December 2018 (the end of its annual period), then the entity is permitted to continue to apply the temporary exemption from IFRS 9 only until 31 December 2019.

...

Temporary exemption from specific requirements in IAS 28

20O Paragraphs 35–36 of IAS 28 *Investments in Associates and Joint Ventures* require an entity to apply uniform accounting policies when using the equity method. Nevertheless, for annual periods beginning before 1 January 2023, an entity is permitted, but not required, to retain the relevant accounting policies applied by the associate or joint venture as follows:

(a) ...

...

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2098**of 15 December 2020**

initiating a review of Council Implementing Regulations (EU) No 443/2011 and (EU) No 444/2011 extending, respectively, the definitive countervailing and anti-dumping duty on imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, for the purposes of determining the possibility of granting an exemption from those measures to one Canadian exporting producer, repealing the anti-dumping duty with regard to imports from that exporting producer and making imports from that exporting producer subject to registration

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ (‘the basic anti-dumping Regulation’) and in particular Articles 13(4) and 14(5) thereof and to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽²⁾ (‘the basic anti-subsidy Regulation’) and in particular to Article 23(6) thereof,

Having regard to Commission Implementing Regulation (EU) 2015/1518 of 14 September 2015 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 ⁽³⁾ and Commission Implementing Regulation (EU) 2015/1519 of 14 September 2015 imposing definitive countervailing duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009 ⁽⁴⁾,

After informing the Member States,

Whereas:

1. REQUEST

- (1) The European Commission (‘the Commission’) received a request for an exemption from the anti-dumping and countervailing measures applicable to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, as far as the Verbio Diesel Canada Corporation (‘the applicant’) is concerned, pursuant to Article 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation.
- (2) The request was lodged on 13 July 2020 by the applicant, who is an exporting producer of biodiesel in Canada.

2. PRODUCT UNDER REVIEW

- (3) The product under review is fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as ‘biodiesel’, in pure form or in a blend containing by weight more than 20 % of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, consigned from Canada, whether declared as originating in Canada or not, currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 16 (TARIC code 2710 20 16 21), ex 3824 99 92 (TARIC code 3824 99 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 50, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11).

3. EXISTING MEASURES

- (4) By Regulations (EC) No 598/2009 ⁽⁵⁾ and (EC) No 599/2009 ⁽⁶⁾, the Council imposed definitive countervailing and anti-dumping duties on imports of biodiesel originating in the United States of America.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21,

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ OJ L 239, 15.9.2015, p. 69.

⁽⁴⁾ OJ L 239, 15.9.2015, p. 99.

⁽⁵⁾ Council Regulation (EC) No 598/2009 of 7 July 2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 1).

⁽⁶⁾ Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 26).

- (5) These measures were extended by Council Implementing Regulations (EU) No 443/2011 ⁽⁷⁾ and (EU) No 444/2011 ⁽⁸⁾, to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not.
- (6) The measures currently in force are imposed by Implementing Regulation (EU) 2015/1518 following an expiry review pursuant to Article 11(2) of the basic anti-dumping Regulation and by Commission Implementing Regulation (EU) 2015/1519 ⁽⁹⁾ following an expiry review pursuant to Article 18(2) of the basic anti-subsidy Regulation.
- (7) On 14 September 2020, the Commission initiated two expiry reviews pursuant to, respectively, Article 11(2) of the basic anti-dumping Regulation ⁽¹⁰⁾ and Article 18(2) of the basic anti-subsidy Regulation ⁽¹¹⁾. These review investigations are ongoing.

4. GROUNDS FOR THE REVIEW

- (8) The applicant alleged that it did not export the product under review to the Union during the investigation period used in the investigation that led to the extended measures as adopted by Implementing Regulations (EU) No 443/2011 and (EU) No 444/2011, namely the period from 1 April 2009 to 30 June 2010 ('the original IP'). The applicant was only legally created in 2019. The plant did not even exist in the original IP. Actually, the plant was built and opened in 2012.
- (9) In addition, the applicant provided evidence that it is a genuine producer and alleged that it has not circumvented the existing measures.
- (10) The applicant further claimed that after the original IP it exported the product concerned to the Union, in December 2019 and in June 2020 respectively.

5. PROCEDURE

5.1. Initiation

- (11) The Commission examined the evidence available and concluded that there was sufficient evidence to justify the initiation of an investigation pursuant to Article 13(4) of the basic anti-dumping Regulation and to Article 23(6) of the basic anti-subsidy Regulation for the purpose of determining the possibility of granting the applicant an exemption from the extended measures.
- (12) The Union industry known to be concerned was informed of the request for a review and was given an opportunity to comment. No comments were received.
- (13) In its investigation, the Commission will pay particular attention to the applicant's relationship with the companies subject to the existing measures in order to ensure that it was not established or used to circumvent the measures. The Commission will also consider whether particular monitoring conditions should be imposed in case the investigation will conclude that granting the exemption is warranted.

⁽⁷⁾ Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 1).

⁽⁸⁾ Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 12).

⁽⁹⁾ Commission Implementing Regulation (EU) 2015/1519 of 14 September 2015 imposing definitive countervailing duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009 (OJ L 239, 15.9.2015, p. 99).

⁽¹⁰⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of biodiesel originating in the United States of America (OJ C 303, 14.9.2020, p. 18).

⁽¹¹⁾ Notice of initiation of an expiry review of the anti-subsidy measures applicable to imports of biodiesel originating in the United States of America (OJ C 303, 14.9.2020, p. 7).

5.2. Repeal of the existing anti-dumping measures and registration of imports

- (14) In line with Article 11(4) of the basic anti-dumping Regulation, in cases of new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based, the anti-dumping duty in force should be repealed with regard to imports of the product under review which are produced and sold for export to the Union by the applicant.
- (15) At the same time, such imports should be made subject to registration in accordance with Article 14(5) of the basic anti-dumping Regulation in order to ensure that, should the review result in a finding of circumvention in respect of the applicant, anti-dumping duties can be levied from the date of the registration of these imports. The amount of the applicant's possible future liabilities would be equal to the duty applicable to 'all other companies' in Article 1(2) of Implementing Regulation (EU) 2015/1518 (172,2 EUR/tonne).

5.3. Existing anti-subsidy measures

- (16) Since the basic anti-subsidy Regulation does not provide for repealing the countervailing duties in cases where exporters were not individually investigated during the original investigation, these measures will remain in force. Only should the review result in the finding that the applicant is entitled to an exemption, the anti-subsidy measures in force will be repealed as regards the applicant.

5.4. Review investigation period

- (17) The investigation will cover the period from 1 April 2009 to 30 September 2020 ('review investigation period').

5.5. Investigating the applicant

- (18) In order to obtain information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant. The applicant must submit the completed questionnaire within 37 days of the date of entry into force of this Regulation, unless otherwise specified, pursuant to Article 6(2) of the basic anti-dumping Regulation and Article 11(2) of the basic anti-subsidy Regulation.

5.6. Other written submissions

- (19) Subject to the provisions of this Regulation, all interested parties are invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must reach the Commission within 37 days of the date of entry into force of this Regulation.

5.7. Possibility to be heard by the Commission investigation services

- (20) All interested parties may request to be heard by the Commission investigation services. Any request to be heard must be made in writing and must specify the reasons for the request. For hearings on issues pertaining to the initiation stage of the investigation the request must be submitted within 15 days of the date of entry into force of this Regulation. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.8. Instructions for making written submissions and sending completed questionnaires and correspondence

- (21) Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing the Commission (a) to use the information and data for the purpose of this trade defence proceeding; and (b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.
- (22) All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Sensitive'. Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment.
- (23) Parties providing 'Sensitive' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic anti-dumping Regulation and Article 29(2) of the basic anti-subsidy Regulation, which will be labelled 'For inspection by interested parties'. Those summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.

- (24) If a party providing 'Sensitive' information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.
- (25) Interested parties are invited to make all submissions and requests by email including scanned powers of attorney and certification sheets, with the exception of voluminous replies which should be submitted on a portable digital storage medium (CD-ROM, DVD, USB flash drive) by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf
- (26) The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate G
Office: CHAR 04/039
1040 Brussels
BELGIUM
Email: TRADE-R731-BIODIESEL-EXEMPTION@ec.europa.eu

6. POSSIBILITY TO COMMENT ON OTHER PARTIES' SUBMISSIONS

- (27) In order to guarantee the rights of defence, interested parties should have the possibility to comment on information submitted by other interested parties. When doing so, interested parties may only address issues raised in the other interested parties' submissions and may not raise new issues. Comments on the information provided by other interested parties in reaction to the disclosure of the definitive findings should be submitted within 5 days from the deadline to comment on the definitive findings, unless otherwise specified. If there is an additional final disclosure, comments filed by other interested parties in reaction to this further disclosure should be made within 1 day from the deadline to comment on this further disclosure, unless otherwise specified. The outlined timeframe is without prejudice to the Commission's right to request additional information from interested parties in duly justified cases.

7. EXTENSION TO TIME LIMITS SPECIFIED IN THIS REGULATION

- (28) Extensions to time limits provided for in this Regulation may be granted upon request of interested parties showing due cause.
- (29) Any extension to the time limits provided for in this Regulation should only be requested in exceptional circumstances and will only be granted if duly justified. In any event, any extension to the deadline to reply to questionnaires will be limited normally to 3 days, and as a rule will not exceed 7 days. Regarding time limits for the submission of other information specified in this Regulation, extensions will be limited to 3 days unless exceptional circumstances are demonstrated.

8. NON-COOPERATION

- (30) In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic anti-dumping Regulation and Article 28 of the basic anti-subsidy Regulation.
- (31) Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.
- (32) If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic anti-dumping Regulation and Article 28 of the basic anti-subsidy Regulation, the result may be less favourable to that party than if it had cooperated.

- (33) Failure to give a computerised response will not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

9. HEARING OFFICER

- (34) Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised. The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered.
- (35) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of entry into force of this Regulation. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.
- (36) For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>

10. SCHEDULE OF THE INVESTIGATION

- (37) The investigation will be concluded, pursuant to Article 11(5) of the basic anti-dumping Regulation and to Article 22(1) of the basic anti-subsidy Regulation, within nine months of the date of the entry into force of this Regulation.

11. PROCESSING OF PERSONAL DATA

- (38) Any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹²⁾.

A data protection notice that informs all individuals of the processing of personal data in the framework of Commission's trade defence activities is available on DG TRADE's website: <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/>

HAS ADOPTED THIS REGULATION:

Article 1

A review is hereby initiated pursuant to Article 13(4) of Regulation (EU) 2016/1036 and Article 23(6) of Regulation (EU) 2016/1037 in order to establish whether the imports of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', in pure form or in a blend containing by weight more than 20 % of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, consigned from Canada, whether declared as originating in Canada or not, currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 16 (TARIC code 2710 20 16 21), ex 3824 99 92 (TARIC code 3824 99 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 50, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11), produced by Verbio Diesel Canada Corporation (TARIC additional code C600), should be subject to the anti-dumping and anti-subsidy measures imposed by Implementing Regulation (EU) 2015/1518 and Implementing Regulation (EU) 2015/1519.

Article 2

The anti-dumping duty imposed by Implementing Regulation (EU) 2015/1518 is hereby repealed with regard to the imports identified in Article 1 of this Regulation.

⁽¹²⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 3

The Customs authorities shall take the appropriate steps to register the imports identified in Article 1 of this Regulation, pursuant to Article 14(5) of Regulation (EU) 2016/1036.

Registration shall expire nine months following the date of entry into force of this Regulation.

Article 4

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 the Member States.

Done at Brussels, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2099**of 15 December 2020****amending Implementing Regulation (EU) 2019/386 as regards the specific rules for the apportionment of tariff rate quotas in respect of which the quota period is ongoing at the date of application of Article 1(2) of Regulation (EU) 2019/216 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular points (a) and (c) of Article 187 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2019/386 ⁽²⁾ lays down rules with regard to the apportionment of tariff rate quotas for certain agricultural products included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union. Those rules are to apply from the day from which Article 1(2) of Regulation (EU) 2019/216 of the European Parliament and of the Council ⁽³⁾ applies.
- (2) For certain tariff rate quotas, the tariff quota period has begun before the day from which Article 1(2) of Regulation (EU) 2019/216 applies and ends after that day. For these cases, Implementing Regulation (EU) 2019/386 provides for specific rules for the apportionment between the Union and the United Kingdom of the remaining quantities to be allocated under those tariff quotas from the day from which Article 1(2) of Regulation (EU) 2019/216 applies.
- (3) Following discussions between the Union and the United Kingdom, a common understanding was reached on how to apportion such tariff rate quotas. This common understanding should ensure that the overall tariff rate quota quantities available for allocation do not exceed the quantities laid down in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union.
- (4) Implementing Regulation (EU) 2019/386 should therefore be amended accordingly.
- (5) To ensure legal certainty and in order for the thus apportioned quantities to be the basis for licence applications submitted as of 1 January 2021, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*.
- (6) Since Implementing Regulation (EU) 2019/386 applies from the day from which Article 1(2) of Regulation (EU) 2019/216 applies, that is from 1 January 2021, this amending Regulation should apply from the same date.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Implementing Regulation (EU) 2019/386 of 11 March 2019 laying down rules with regard to the apportionment of tariff rate quotas for certain agricultural products included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union and with regard to import licences issued and import rights allocated under those tariff rate quotas (OJ L 70, 12.3.2019, p. 4).

⁽³⁾ Regulation (EU) 2019/216 of the European Parliament and of the Council of 30 January 2019 on the apportionment of tariff rate quotas included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union, and amending Council Regulation (EC) No 32/2000 (OJ L 38, 8.2.2019, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Implementing Regulation (EU) 2019/386

In Article 1 of Implementing Regulation (EU) 2019/386, paragraph 3 is replaced by the following:

‘3. By way of derogation from paragraph 1, where for a tariff rate quota the quota period begins before the day from which Article 1(2) of Regulation (EU) 2019/216 applies and ends after that day, the apportionment of the quantities to be allocated from that day under the tariff rate quota concerned shall be made as follows for the Union:

- (a) if the quantities allocated in the Member States other than the United Kingdom before the day from which Article 1(2) of Regulation (EU) 2019/216 applies are equal or higher than the quantity set out in the third column of Annex I to this Regulation as regards tariff rate quotas managed by the simultaneous examination method or Annex II to this Regulation as regards tariff rate quotas managed by the “first come, first served” method, no additional quantities shall be available for allocation;
- (b) if the quantities allocated in the Member States other than the United Kingdom before the day from which Article 1(2) of Regulation (EU) 2019/216 applies are less than the quantity set out in the third column of Annex I to this Regulation as regards tariff rate quotas managed by the simultaneous examination method or Annex II to this Regulation as regards tariff rate quotas managed by the “first come, first served” method, the quantity available for allocation shall be the difference between the quantity set out in the third column of Annex I or Annex II to this Regulation and the quantities already allocated in those Member States.

However, where the quantities allocated in the United Kingdom before the day from which Article 1(2) of Regulation (EU) 2019/216 applies are greater than the difference between the EU-28 quantity as set out in the WTO schedule of the Union and the EU-27 quantity set out in the third column of Annex I or Annex II to this Regulation, those exceeding quantities shall be deducted from the quantity available for allocation in the Member States other than the United Kingdom from the day from which Article 1(2) of Regulation (EU) 2019/216 applies.

Within two working days from the day from which Article 1(2) of Regulation (EU) 2019/216 applies, the Commission shall publish, by means of an appropriate web publication, the quantities available for each tariff rate quota referred to in the first subparagraph of this paragraph on the day from which Article 1(2) of that Regulation applies.’

Article 2

Entry into force

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

It shall apply from 1 January 2021.

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

Done at Brussels, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2100**of 15 December 2020****imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) By Council Regulation (EC) No 2022/95 ⁽²⁾ ('original investigation'), the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate falling at the time of the entry into force of the regulation under CN codes 3102 30 90 and 3102 40 90 and originating in Russia ('the country concerned'). Pursuant to a further investigation, which established that the duty was being absorbed, the measures were amended by Council Regulation (EC) No 663/98 ⁽³⁾.
- (2) Following a first expiry review and a first interim review pursuant to Articles 11(2) and 11(3) of Regulation (EC) No 384/96 ⁽⁴⁾ the Council, by Council Regulation (EC) No 658/2002 ⁽⁵⁾, imposed a definitive anti-dumping duty of EUR 47,07 per tonne on imports of ammonium nitrate falling at the time of the entry into force of the regulation under CN codes 3102 30 90 and 3102 40 90 and originating in Russia.
- (3) Subsequently, a product scope interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 was carried out and, by Council Regulation (EC) No 945/2005 ⁽⁶⁾, a definitive anti-dumping duty ranging between EUR 41,42 per tonne and EUR 47,07 per tonne was imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, falling at the time of the entry into force of the regulation under CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91 and originating in Russia.
- (4) Following a second expiry review and a second partial interim review pursuant to Articles 11(2) and 11(3) of Regulation (EC) No 384/96, the Council, by Council Regulation (EC) No 661/2008 ⁽⁷⁾, maintained the measures in force. The duty was left unchanged, except for the EuroChem group, for which the fixed amount of duty ranged between EUR 28,88 and EUR 32,82 per tonne.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

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

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

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

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

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

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

- (5) The European Commission ('the Commission'), by Decision 2008/577/EC ⁽⁸⁾, accepted the undertakings' offers with a quantitative ceiling from the Russian producers JSC Acron and JSC Dorogobuzh, members of the Acron Holding Company and from EuroChem group.
- (6) By judgment of 10 September 2008 ⁽⁹⁾, interpreted by judgment of 9 July 2009 ⁽¹⁰⁾, the General Court annulled Regulation (EC) No 945/2005 in so far as it concerned JSC Kirovo-Chepetsky Khimichesky Kombinat ('Kirovo'), part of OJSC UCC UralChem ('Uralchem'). The Council, by Council Regulation (EC) No 989/2009 ⁽¹¹⁾, amended Regulation (EC) No 661/2008 accordingly. Consequently, for the company Kirovo the anti-dumping duty at the time of the entry into force of the Regulation (EUR 47,07 per tonne) applied only to imports of ammonium nitrate falling under CN codes 3102 30 90 and 3102 40 90.
- (7) By Decision 2012/629/EU ⁽¹²⁾, the Commission withdrew its acceptance of the undertaking offered by the EuroChem Group because of the impracticability of the undertaking.
- (8) Following a third expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 ⁽¹³⁾, the Commission, by Commission Implementing Regulation (EU) No 999/2014 ⁽¹⁴⁾, maintained the measures in force. That investigation is hereafter referred to as 'the last expiry review'.
- (9) Commission Implementing Regulation (EU) 2016/226 ⁽¹⁵⁾ amending Implementing Regulation (EU) No 999/2014 addressed the restructuring of Kirovo as a branch of Uralchem.
- (10) The Commission, by Commission Implementing Regulation (EU) 2016/415 ⁽¹⁶⁾, withdrew the acceptance of the undertaking for the Acron Holding Company due to the impracticability of the undertaking.
- (11) Following a review pursuant to Article 11(3) of Implementing Regulation (EU) 2018/1722 ⁽¹⁷⁾, the Commission amended the measures in force. That investigation is referred to as 'the last interim review'. On this basis, the fixed amount of duty currently in place range between EUR 28,78 and EUR 32,71 per tonne.

1.2. Request for an expiry review

- (12) Following the publication of a notice of impending expiry ⁽¹⁸⁾ of the anti-dumping measures in force on the imports of ammonium nitrate originating in Russia, the Commission received a request for review pursuant to Article 11(2) of the basic Regulation.

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

⁽⁹⁾ Case T-348/05.

⁽¹⁰⁾ Case T-348/05 INTP.

⁽¹¹⁾ Council Regulation (EC) No 989/2009 of 19 October 2009 amending Regulation (EC) No 661/2008, imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ L 278, 23.10.2009, p. 1).

⁽¹²⁾ Commission Decision 2012/629/EU of 10 October 2012 amending Decision 2008/577/EC accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia (OJ L 277, 11.10.2012, p. 8).

⁽¹³⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

⁽¹⁴⁾ Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 280, 24.9.2014, p. 19).

⁽¹⁵⁾ Commission Implementing Regulation (EU) 2016/226 of 17 February 2016 amending Implementing Regulation (EU) No 999/2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 41, 18.2.2016, p. 13).

⁽¹⁶⁾ Commission Implementing Regulation (EU) 2016/415 of 21 March 2016 withdrawing the acceptance of the undertaking for two exporting producers and repealing Decision 2008/577/EC accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia (OJ L 75, 22.3.2016, p. 10).

⁽¹⁷⁾ Commission Implementing Regulation (EU) 2018/1722 of 14 November 2018 amending Implementing Regulation (EU) No 999/2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 287, 15.11.2018, p. 3).

⁽¹⁸⁾ OJ C 53, 11.2.2019, p. 3.

- (13) The request was lodged on 21 June 2019 by a European association of fertilizers manufacturers, Fertilizers Europe ('the applicant' or 'FE'), on behalf of Union producers representing more than 25 % of the Union production of ammonium nitrate.
- (14) The request was based on the grounds that the expiry of the measures would be likely to result in continuation and/or recurrence of injurious dumping of injury to the Union industry.

1.3. Initiation

- (15) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 23 September 2019, by notice published in the *Official Journal of the European Union* ⁽¹⁹⁾ ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

1.4. Interested parties

- (16) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned, and the Russian authorities of the initiation of the expiry review and invited them to participate.
- (17) All interested parties had the opportunity to comment on the initiation of the review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.5. Comments on initiation

- (18) Following initiation, the Russian Fertilisers Producers Association ('RFPA') submitted that the request failed to provide sufficient evidence that the expiry of the anti-dumping measures on Russian ammonium nitrate ('AN') would result in the likely continuation or recurrence of dumping or injury. More specifically, RFPA submitted that since the original review request filed on 21 June 2019 ('original review request') provided no evidence of domestic sales being made outside the ordinary course of trade, the calculation of the dumping margin based on the construction of the normal value was illegal. RFPA further argued that the review request of 21 June 2019 did not have any evidence of dumping based on the comparison of actual domestic prices with export prices and that the applicant added such evidence only to the revised version of the request based on a deficiency letter issued by the Commission.
- (19) Furthermore, RFPA claimed that the applicant's cost calculations were based on an inflated cost of manufacturing. They also claimed that the calculations of a constructed normal value were manifestly erroneous, based on unreliable, internally inconsistent, outdated information, incomprehensible data and mere estimates of a consultant, and that the Commission failed to diligently review these calculations.
- (20) The Commission initiated the expiry review based on the review request as initially submitted on 21 June 2019 and further supplemented by additional information (collectively referred to as 'consolidated review request'). The consolidated review request, which constitutes the basis for the initiation of this expiry review, was placed in the open file and made available to interested parties for consultation. As stated in point 4.1 of the Notice, the Applicant provided in its review request evidence of a normal value based on actual domestic prices and equally constructed the normal value in case the domestic prices would not be considered as reliable and reflecting ordinary course of trade. Whether the original request was supplemented with estimated normal values on the basis of information available on actual domestic prices in the country concerned is irrelevant insofar as the Commission initiated the expiry review on the basis of the consolidated review request.
- (21) Regarding unreliability of data used by the Applicant in its allegations, a review request must contain sufficient evidence necessary to support the initiation of the review. The quality of this evidence will necessarily be limited by the applicant's ability to have access to the relevant information, which in most cases is confidential. Potential inaccuracies in the applicant's request uncovered during the investigation however do not render the initiation of this expiry review unlawful and the Commission investigation in this case in fact confirmed that the initiation was warranted.

⁽¹⁹⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia (OJ C 318, 23.9.2019, p. 6).

- (22) Following the disclosure, RFPA ⁽²⁰⁾ reiterated their argument that no expiry review request that would satisfy the requirements of Article 11(2) of the basic Regulation had been lodged within the legal deadline. According to RFPA, it is the original review request that constitutes the basis for the initiation of the expiry review and against which the sufficiency-of-evidence requirement has to be assessed. Acron and the Russian Government provided similar arguments after the final disclosure. RFPA further submitted that while the Union producers could have clarified the evidence provided in the original review request, entirely new evidence on the likelihood-of-dumping or injury submitted outside the legal limit (i.e. 3 months before the end of the five-year period) should be disregarded. In this context, RFPA also referred to the Decision of the European Ombudsman ⁽²¹⁾ concerning a previous expiry review as well as to the recommendation of the Hearing Officer to the Commission services to disclose the original review request in the current review.
- (23) The Commission notes that no new argument was raised by RFPA. Thus, the Commission recalls its position set out in recital (20) that this expiry review was initiated on the basis of the consolidated review request. The Commission considers that the request in its version filed by the 3-month deadline contained sufficient evidence that, subject to the clarifications provided by the applicants following the deficiency process to supplement its initial request, warranted the initiation of the expiry review. This in line with the Ombudsman Decision that in relevant parts states:
- ‘16. The Ombudsman agrees that the three-month period is established for the administrative convenience of the Commission, which needs to assess the information provided by the applicants prior to deciding whether it should open an expiry review procedure. Logically, the Commission’s verifications during this process may involve requesting clarifications and even additional information from the applicants, thus leading to consolidated review requests.*
- 17. However, these clarifications and additional information will not replace, but supplement the content of the original Review Request. Consequently, the latter will necessarily be used by the Commission within the meaning of Article 6(7) of the Basic Regulation when it decides to open an expiry review investigation. In fact, the Commission seems to admit this when it states, in the opinion, that it was the Review Request together with the subsequent clarifications presented as a consolidated version that formed the basis of... [the] opening of the investigation.’.*
- (24) Furthermore, after the definitive disclosure, RFPA and the Russian Government claimed that the fact that the consolidated review request constituted the basis for initiation was not supported by the record of the investigation.
- (25) The consolidated review request was placed in the file for inspection by the interested parties at initiation stage. There is no ambiguity as to the fact that the expiry review was initiated on the basis of that request. This can be confirmed by the reading of section 4.1 of the Notice of Initiation, which clearly referred to evidence stemming from the consolidated review request.
- (26) With reference to Article 5(3) basic Regulation, RFPA submitted that the Commission failed to examine the accuracy and adequacy of the evidence provided by the applicant. In that context, RFPA also noted that both, the original and consolidated review requests only alleged the existence of a likelihood of continuation of dumping, while the Commission did not make any findings as to the continuation of dumping.
- (27) The Commission notes that the argument is based on a misunderstanding of the purpose of a request on the one hand and the purpose of a review investigation on the other hand. The purpose of a request is to justify the initiation of an expiry review investigation based on the evidence reasonably available to the applicant as regards continuation or recurrence of injurious dumping. As explained above, the request contained sufficient evidence to that effect. On the other hand, the purpose of the review investigation is to determine whether the expiry of the measures would be likely to lead to continuation or recurrence of dumping and injury based on the information collected from the various interested parties during the review investigation. It is perfectly factually possible and legally admissible that the evidence available to the applicant shows a likelihood of continuation of dumping while the investigation will establish, based on the information collected from and verified with interested parties, that

⁽²⁰⁾ The response to the disclosure was filed jointly by RFPA, Eurochem group and Uralchem group.

⁽²¹⁾ Decision of the European Ombudsman closing the inquiry into complaint 577/2014/MDC on the European Commission's refusal to grant access, pursuant to Council Regulation 1225/2009, to a request for review concerning the expiry of anti-dumping duties on ammonium nitrate imports from Russia, para.14 ('Ombudsman Decision').

dumping is in fact likely to recur. To this effect, point 5 in the Notice of Initiation states that '[h]aving determined (...) that sufficient evidence of a likelihood of dumping and injury exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 11(2) of the basic Regulation'. The Notice of Initiation further specifies that '[t]he expiry review will determine whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping of the product under review originating in the country concerned and a continuation or recurrence of injury to the Union industry'. Thus, having evidence tending to show continuation of dumping is sufficient to trigger an investigation on whether there is continuation or recurrence of dumping. Therefore, this claim is rejected.

- (28) RPPA and Acron submitted, with reference to the WTO panel report issued on 24 July 2020 ⁽²³⁾ ('DS494 Report'), that (i) the previous expiry review in this case should not have been initiated, due to a lack of sufficient evidence of the likelihood-of-dumping and hence that the Commission should repeal the anti-dumping measures on ammonium nitrate from Russia and (ii) this expiry review is vitiated by the same errors as the previous review and therefore should not have been initiated. In this context, both RPPA and Acron repeatedly referred to the review request as lodged on 21 June 2019 and evidentiary shortcomings thereof. Similar claims were restated by RPPA and the exporting producers following the final disclosure.
- (29) RPPA's and Acron's comments have to be rejected for the following reasons. First, the findings of the DS494 Report are subject to appellate proceedings and therefore the panel's findings are not final. Second, as set out in recital (20), initiation in this expiry review is not solely based on information as received in the original review request of 21 June 2019, but also on further evidence supplemented by the applicant prior to the initiation and included in the consolidated review request (containing evidence of a normal value based on actual domestic prices as well as a constructed the normal value in case the domestic prices would not be considered as reliable).
- (30) RPPA also submitted that RPPA's rights of defence had been breached because of the Commission's denial of access to a full version of certain annexes of the review request.
- (31) All requests for access to file made in this case by the interested parties, including RPPA, have been diligently examined. The Commission ensured that revised and meaningful non-confidential versions of the disputed documents, including annexes of the review request, were provided to the parties.

1.6. Sampling

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

1.6.1. Sampling of Union producers

- (33) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of sales which could reasonably be investigated within the time available, considering also the geographical location. This sample consisted of three Union producers. The sampled Union producers accounted for 40 % of the production volumes of the companies that have come forward in the standing exercise and around 35 % of the estimated total production in the Union. The Commission invited interested parties to comment on the provisional sample.
- (34) Some interested parties submitted comments with regard to the provisional sample. The Commission considered the comments and explained in the note added to the open file on 14 October 2019 the reasons why those comments could not be accepted. As a result, the original sample was maintained.
- (35) Several interested parties reiterated and provided additional claims regarding the sample of the Union producers after the deadline to provide comments and after their initial comments had been addressed in the Note to the open file.

⁽²³⁾ Dispute DS494, EU – Cost Adjustment Methodologies II (Russia).

- (36) Two interested parties reiterated their claim that the sample of the Union producers was not representative and requested the exclusion of two Union producers for which injury was found in another investigation of mixtures of urea and ammonium nitrate ('UAN case') ⁽²³⁾. They claimed that ammonium nitrate solution was a semi-finished product used for both ammonium nitrate and UAN. Therefore, injury to one product would automatically translate to injury for both products. In addition, ammonium nitrate is produced with the same equipment; therefore, there is only one common cost of production. Consequently, if the ammonium nitrate production line is underutilized due to the reduced production and sales of urea and ammonium nitrate, the higher fixed cost will impact profitability of ammonium nitrate for free or captive use alike. Therefore, there are no means to break a single micro economic indicator between ammonium nitrate used for the free and captive market.
- (37) The Commission disagreed with this claim. In all investigations, costs are allocated to the product being investigated only. Indeed, if there were no means to correctly and reasonably allocate the cost of production of vertically integrated producers, the information provided by any such producer investigated would be put in question (including the cooperating exporting producers in Russia of this investigation). Therefore, it is within a standard Commission's practice that all economic indicators refer distinctively to the product in question, including the indicator of the cost of production. Accordingly, when verifying the vertically integrated sampled Union producers in question, the Commission ensured that there was a clear distinction in cost incurred for each product produced within these companies. The argument of the parties was therefore dismissed.
- (38) One interested party claimed that the production of both, ammonium nitrate and urea and ammonium nitrate is not common among the Union producers of ammonium nitrate. This fact jeopardizes the sample and makes it a non-representative.
- (39) The two sampled Union producers are two of the three largest Union producers of ammonium nitrate in terms of the production and sales volumes reported in the standing exercise. This fact contradicts the allegation that production of both, ammonium nitrate and urea and ammonium nitrate is not common among EU producers of ammonium nitrate, and would not be representative or typical of the Union industry. The argument of the party was dismissed.

1.6.2. *Sampling of importers*

- (40) To decide whether sampling was necessary and, if so, to select a sample, the Commission requested all unrelated importers to provide the information specified in the Notice of Initiation.
- (41) No importers came forward to provide the information requested in the Notice of Initiation.

1.6.3. *Sampling of exporting producers*

- (42) In view of the apparent large number of exporting producers in Russia, sampling was envisaged in the Notice of Initiation.
- (43) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the country concerned to provide the information specified in the Notice of Initiation. The information requested included sales volume and value, production volume and production capacity. In addition, the Commission requested the Mission of Russia to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

⁽²³⁾ Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ L 258, 9.10.2019, p. 21).

- (44) Eight exporting producers in the country concerned, representing essentially the totality of the Russian AN production, provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers which could reasonably be investigated within the time available. These producers were the largest producers as well as the largest exporters in the review investigation period (or 'RIP').
- (45) In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made. The Commission thus decided to retain the proposed sample and all interested parties were accordingly informed of the finally selected sample.
- (46) The Commission selected the following three exporting producers for the sample:
- Uralchem JSC (including Berezniki Azot and Kirovo-Chepetsk Chemical works) ('Uralchem')
 - EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot') ('Eurochem')
 - Acron group (PJSC Acron, PJSC Dorogobuzh) ('Acron')
- (47) The sample represented 65 % of the reported Russian AN production in volume during the RIP, based on the replies to the sampling forms. The sample included two exporting producers, Acron and Eurochem, that had export sales of the product under review to the Union during the RIP. The third sampled company, Uralchem, only exported to the EU ammonium nitrate produced by its Kirovo branch, and not covered by the measures being reviewed as explained in recital (6).

1.7. Questionnaires and verification visits

- (48) The Commission sent questionnaires to all sampled Union producers, all sampled exporting producers and all known users associations that came forward after initiation.
- (49) Questionnaire replies were received from the three sampled Union producers, the three sampled exporting producers and two users of the product under review.
- (50) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and for the determination of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies/associations:
- (a) Union producers:
- AB Achema, Lithuania
 - Grupa Azoty Zakłady Azotowe Pulawy S.A., Poland
 - Yara France S.A., France
 - Union producers' association:
 - Fertilizers Europe, Belgium
- (b) Exporting producers in Russia:
- EuroChem Group AG (Joint Stock Company 'Nevinnomyssky Azot' (Nevinka), Joint Stock Company 'Azot' (NAK) and domestic trader Eurochem Trading RUS LLC)
 - Acron group (PJSC Acron, PJSC Dorogobuzh, domestic traders – Agronovas)
- (c) Related traders of the exporting producers:
- EuroChem Trading GmbH, Switzerland and EuroChem Agro GmbH, Germany
- (51) Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice'), the Commission was however unable to carry out verification visits at the premises of all exporting producers and their related companies. Instead the Commission performed remote cross-checks ('RCCs') of the information provided by the following companies via videoconference:
- (a) Exporting producers in Russia:
- Uralchem group (including Berezniki Azot, Kirovo-Chepetsk Chemical works and Uralchem Trading House LLC)

(b) Related traders of the exporting producers:

- Uralchem Trading SIA, Latvia
- Acron Switzerland AG, Switzerland

(52) In addition to the RCCs, the Commission cross-checked the information provided by exporting producers with the complaint and verified information provided by the Union industry and other interested parties.

1.8. Review investigation period and period considered

(53) The investigation of a continuation or recurrence of dumping covered the period from 1 July 2018 to 30 June 2019 ('the review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2016 to the end of the review investigation period ('the period considered').

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (54) The product subject to this review is the same as in the last interim review, namely solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling under CN codes 3102 30 90, ex 3602 00 00, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 20 (TARIC codes 3102 29 00 10, 3102 60 00 10, 3102 90 00 10, 3105 10 00 10, 3105 10 00 20, 3105 10 00 30, 3105 10 00 40, 3105 10 00 50, 3105 20 10 30, 3105 20 10 40, 3105 20 10 50, 3105 20 10 60, 3105 51 00 10, 3105 51 00 20, 3105 51 00 30, 3105 51 00 40, 3105 59 00 10, 3105 59 00 20, 3105 59 00 30, 3105 59 00 40, 3105 90 20 30, 3105 90 20 40, 3105 90 20 50, 3105 90 20 60, 3602 00 00 10) and originating in Russia ('the product under review').
- (55) Ammonium nitrate ('AN') is a solid nitrogen fertiliser commonly used in agriculture, but is also used for industrial purposes such as the production of explosives (for instance used in mining). AN used both for agricultural and for explosive purposes is covered by the anti-dumping measures in force. Both types of AN have the same technical and chemical characteristics, are easily interchangeable and are considered as the product under review.
- (56) Two interested parties claimed that the product scope of this expiry review and the measures should be revised. According to these parties, the Kirovo judgment ⁽²⁴⁾, annulled Regulation (EC) No 945/2005 which expanded the product scope ⁽²⁵⁾ compared to the initial investigation. Therefore, there was no legal basis to continue applying anti-dumping duties to these products. Furthermore, since no injury and dumping had ever been found for these additional products (collectively referred to as 'stabilised AN'), there was no basis to examine the likelihood of continuation or recurrence of dumping. There was never dumping or injury found for stabilised AN, therefore dumping or injury can neither continue, nor recur. They further claimed that there was no sufficient evidence to conduct an expiry review with regard to imports of stabilised AN, while the Commission standing exercise and definition of the Union industry missed the producers of the stabilised AN. Following the disclosure, Acron reiterated the argument that the product scope of this expiry review was illegal to the extent that it included mixtures or the stabilised AN.
- (57) The judgment in question annulled Regulation (EC) No 945/2005 only in so far as it concerned one Russian exporting producer as clarified by the Court of First Instance in Case T-348/05 INTP ⁽²⁶⁾. For all the other Russian producers the applicable product scope remains the one specified in Regulation (EC) No 945/2005. The claim of the party is dismissed.

⁽²⁴⁾ Judgment of the Court of First Instance of 10 September 2008, Case T-348/05, JSC Kirovo-Chepetsky Khimichesky Kombinat v Council, EU:T:2008:327.

⁽²⁵⁾ Including ammonium nitrate to which phosphorus and/or potassium nutrients were added (so-called 'dirty' or 'stabilised' ammonium nitrate).

⁽²⁶⁾ Judgment of the Court of First Instance of 9 July 2009, Case T-348/05 INTP, JSC Kirovo-Chepetsky Khimichesky Kombinat v Council, EU:T:2009:261.

- (58) Following the disclosure, several interested parties ⁽²⁷⁾ reiterated the claim that there was no legal basis to apply antidumping measures to stabilised AN, since, as ruled by the General Court ⁽²⁸⁾, they were not considered to be like products with the product of the initial investigation.
- (59) As clarified by the Court of First Instance in Case T-348/05 INTP ⁽²⁹⁾, the Judgment of the Court of First Instance of 10 September 2008, Case T-348/05 concerned only one Russian exporting producer (the applicant). Therefore, the annulment of the regulation contested by the applicant is limited to the applicant. The claim was therefore dismissed.
- (60) RFPA further argued that in the alternative, the Commission's assessment was erroneous as it failed to consider stabilised AN in its analysis. According to RFPA, the inclusion of stabilised AN within the product under review and like product would have led the Commission to entirely different conclusions with regard to the likelihood of recurrence of dumping and injury.
- (61) It is recalled that, as a result of the judgment in case T-348/05, stabilised AN produced by the Kirovo branch of Uralchem is not covered by the current measures and hence was not part of the Commission dumping and injury analysis in the present case. Apart from the product produced and exported by Kirovo, the Commission analysis in the present case covered the entire product under review as defined in recital (54), which includes stabilised AN. Therefore, the argument raised by RFPA had to be rejected.
- (62) Another interested party claimed that the request for review for the first time during the years of application of duties refers to the industrial grade of AN producers and the industrial grade AN producers in the Union should have formed part of the allegedly injured domestic industry in the course of the original investigation. Since they did not form part of the domestic industry at that time and therefore no injury was ever found for the industrial grade AN producers in the Union. No anti-dumping duties should apply to industrial grade AN either. Industrial grade AN should also be excluded from the product under review.
- (63) This claim is unfounded. To the extent it satisfies the definition of the product under review, ammonium nitrate used for industrial purposes, and as a result the industry producing it, have always been covered by the investigations and measures. The fact the product types might have different end-use is irrelevant as long as the product is still within the definition of the 'product under review'. This claim is therefore rejected.

2.2. Like product

- (64) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:
- the product under review;
 - the product produced and sold on the domestic market of Russia;
 - the product produced and sold in the Union by the Union industry.
- (65) The Commission concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (66) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

⁽²⁷⁾ Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot'), Uralchem JSC, PJSC Acron and its related companies..

⁽²⁸⁾ Judgment of 10 September 2008, JSC Kirovo-Chepetsky Khimichesky Kombinat v Council of European Union, T-348/05, EU: T:2008:327, para. 64.

⁽²⁹⁾ Judgment of the Court of First Instance of 9 July 2009, Case T-348/05 INTP, JSC Kirovo-Chepetsky Khimichesky Kombinat v Council, EU:T:2009:261, para. 8.

3.2. Likelihood of continuation of dumping

- (67) With respect to the Union exports, during the RIP, the sampled exporting producers sold only insignificant volumes to customers in the Union. In fact, as mentioned in recital (47), only Acron and Eurochem had export sales to the Union in the RIP. These sales were made either directly or via related traders established in Switzerland and in the Union. The third sampled producer, Uralchem only exported to the Union stabilised AN produced by its Kirovo branch, not covered by the current measures.
- (68) In terms of concrete volumes, according to the data reported by Uralchem and in line with the information extracted from the Article 14(6) database ⁽³⁰⁾, the majority of imports to the Union from Russia during the RIP, amounting to [50 000-100 000] tonnes, concerned stabilised AN not subject to the EU anti-dumping duty.
- (69) Thus, total imports of the product covered by the anti-dumping measures (and by this review) accounted for [38 000 – 43 000] tonnes during the review investigation period, which corresponds to [0,4 – 0,8]% of the Union consumption and [0,3 – 0,5 %] of the Russian AN production in the RIP. Moreover, these sales were limited to a small number of customers in the Baltic States, Finland and Sweden.
- (70) These findings were based on verified data provided by the sampled exporting producers, the extract from the Article 14(6) database and are consistent with the RFPA submission that AN imports from Russia declined to negligible levels.
- (71) As a result, the Russian export sales to the Union were not considered representative of the price (and the quantities) for which the exporting producers would sell the product under review to the Union absent any measures. Under these circumstances it is considered that the Union sales during the RIP could not be used for assessing whether dumping would be likely to continue should anti-dumping measures be allowed to lapse.
- (72) In response to the disclosure, RFPA and Eurochem claimed with reference to Article 11(9) basic Regulation that since the structure of the Russian sales has not changed, the same methodology used to set the level of duty in the last interim review ⁽³¹⁾ (i.e. based on Kirovo's export sales of stabilised AN to the Union) should have been employed for the purpose of determining the likelihood of continuation of dumping in this case. In the same vein, Uralchem argued that if Implementing Regulation (EU) 2018/1722 treated Kirovo's stabilised AN as the best and only evidence available to set the level of the duty for Russia at large, the Commission was required to do the same in this case according to Article 11(9) basic Regulation. Uralchem further developed a separate dumping analysis limited to its sales of the stabilised AN.
- (73) The Commission notes that these claims depart from a wrong premise as the Commission did not use the export price of stabilised AN from Kirovo to set the level of measures in the last interim review. In both cases, exports to third countries were the basis for the Commission's findings. However, in the interim review, in the absence of usable Russian sales in the EU market and the need to calculate an injury margin based on sales to the Union, Kirovo's stabilised AN sales to the Union were found to be the best proxy available to make a price comparison calculation that could be used for setting the new duty level. Furthermore, in order to make this proxy comparable to usable Russian sales to the EU, the prices of Kirovo's stabilised AN were adjusted for the calculation of the undercutting and underselling. This is not required in an expiry review, where the assessment of the likelihood of recurrence of dumping can be based purely on actual transactions to third country sales. The Commission also notes that the methodology applied in this review followed the same methodology of using exports to third countries in the assessment of the likelihood of recurrence of dumping that was applied in the last expiry review. Thus, the Commission has fully respected Article 11(9) of the basic Regulation. Therefore, the claims were rejected.
- (74) Acron and Eurochem further submitted in response to the disclosure that during the RIP, its sales to the Union were stable, at representative prices and in sufficient volumes to permit a dumping analysis and that there is no finding of dumping.

⁽³⁰⁾ Monthly import statistics based on actual data provided by customs authorities in Member States under Article 14(6) of the basic Regulation.

⁽³¹⁾ Implementing Regulation (EU) 2018/1722.

- (75) This claim should be rejected. As noted in recital (67), the sampled exporting producers sold only insignificant volumes to customers in the Union. Thus, the Russian export sales to the Union were not considered representative and hence could not be used for assessing whether dumping would be likely to continue should anti-dumping measures be allowed to lapse (see recitals (69) and (71) for more details).

3.3. Likelihood of recurrence of dumping

- (76) In light of the considerations set out in recitals (67)-(71), the Commission analysed whether there was evidence of likelihood of recurrence of dumping should the measures lapse. The Commission analysed the following factors: the export price for sales from Russia to other destinations, the production capacity and spare capacity in Russia as a whole, and the attractiveness of the Union and other third markets.

3.3.1. Exports to third countries

- (77) All of the cooperating exporting producers exported significant quantities to third countries and provided detailed information concerning those exports. In the absence of representative export volumes to the Union, the exports to other third countries were considered for analysing the likelihood of recurrence of dumping should the measures be allowed to lapse.
- (78) The Commission found that during the RIP, the sampled exporting producers sold almost 50 % ⁽³²⁾ of their total sales quantities to third markets. Over 70 % of these third market sales were directed mainly to Latin America (Brazil, Peru, Colombia, Ecuador), but also to countries such as United States, Kazakhstan, Morocco, Azerbaijan and Zimbabwe. The export volumes to other third countries were very low.
- (79) An analysis comparing the actual prices in the domestic market with the sales to third countries on an ex-works basis was made. Following the comparison, the Commission established individually for all three sampled exporting producers that the weighted average ex-works export price to their main third country markets during the RIP was lower than their actual weighted average domestic ex-works price paid or payable during the RIP.
- (80) The above findings were based on verified data provided by the sampled exporting producers, which accounted for around 80 % of the total Russian AN exports to third countries. Accordingly, there was no need for the Commission to resort to export statistics.
- (81) Overall, during the RIP the average ex-works export price of the three sampled exporting producers to third countries was 133 EUR/tonne, while their average ex-works domestic price was 145 EUR/tonne. Therefore, it was considered likely that, if the current measures were to be repealed, the Russian exporting producers would sell to the Union at dumped levels.
- (82) Concerning the Russian domestic prices, FE claimed that a particular market situation exists with respect to AN pricing on the domestic Russian market due to a state intervention in the form of price restraints. Therefore, according to FE, domestic prices of AN were not suitable to be used in the current proceeding. Following the disclosure, FE reiterated its conviction that there is a state intervention mainly characterised by price constraints in Russia. To that effect, FE referred to numerous sources and documents authored by various public authorities, such as price lists, agreements, road maps and briefings given by public officials. However, the documents presented by FE were dated outside of the RIP and/or FE failed to explain the relevance and effect of such evidence on the domestic sales of the exporting producers and suitability of their use in these proceedings. In any event, the relevance of those documents in the context of these proceedings is questionable. Once the Commission has established as mentioned in recital (81) the likelihood of recurrence of dumping to the EU, the particular high or higher dumping level would not change this conclusion (see also recital (85) on this point). FE's claims were thus rejected.
- (83) Following the disclosure, FE argued that Brazil was the most representative example of the Russian dumping, based on public export statistical reports and local independent domestic reports.

⁽³²⁾ This excludes the sales of stabilised ammonium nitrate produced by Kirovo branch of Uralchem, which are not subject to an anti-dumping duty.

- (84) The Commission findings are based on company-specific and verified data provided by the sampled exporting producers, which were deemed more accurate and reliable than aggregate public statistics. Furthermore, the Commission performed a price analysis of exports to a number of third country markets considered to be representative of total sales to third countries for each of the sampled producers (see recital (78)). An evaluation of sales to numerous third countries was considered more representative than an evaluation of data for a single country.
- (85) Moreover, FE submitted in response to the disclosure that the Commission failed to address the particular gas market situation in Russia in its dumping assessment.
- (86) As explained in recitals (77) to (81), the Commission did not perform a dumping calculation in this expiry review. Hence, the Commission did not consider it necessary to assess the reliability of the costs of production (including the gas costs).
- (87) In response to the disclosure, RFPA and Acron argued that the Commission failed to perform a dumping margin calculation, thus breaching Articles 11(9) and 2 of the basic Regulation which mandates the use of a standard methodology to determine the existence of dumping in the context of expiry reviews. Acron and Eurochem also argued that the Commission did not disclose any dumping calculations in this investigation, thereby violating their rights of defence. According to them, it was also unclear why the Commission compared the ex-works domestic price to the ex-works export price to third countries without actually performing a dumping calculation.
- (88) The Commission did not calculate dumping on the basis of imports into the EU during the RIP because it found that the total volume of Russian exports of the product under review to the Union were unrepresentative. Therefore, this volume was not a reliable basis for a dumping calculation. As a result, the Commission could not have a conclusive finding of dumping into the EU during the RIP and, instead, assessed the likelihood of recurrence of dumping on the basis of Russian exports of AN to third markets. Reference is also made to recital (81) for conclusions drawn by the Commission from the said price comparison.
- (89) In relation to Articles 11(9) and 2 of the basic Regulation, as highlighted in recital (73), the Commission used the same methodology in the last expiry review. The Commission refers to section 3.1.1 of the last expiry review Regulation ⁽³³⁾, where it assessed in full the exports of Russia to other destinations in its analysis of likelihood of recurrence of dumping. Therefore, there was not only not a breach of Article 2 of the basic Regulation but also there can be no breach of Article 11(9).
- (90) Finally, in terms of procedural rights, the Commission disclosed all the essential facts and figures underlying the comparison made, while observing parties' rights of defence. The Commission even provided parties with additional disclosures (on 30 September and 21 October 2020) in order to further clarify and make sure that interested parties had correctly understood the Commission's calculations. Therefore, those arguments had to be rejected.
- (91) Following the final disclosure, Acron argued that its rights of defence were violated since the Commission collected more information than necessary for its assessment, in particular in the absence of the dumping calculation. First, Acron failed to explain how this fact would be in breach of its right of defence. Second, even if the Commission had all the data to perform the dumping calculation, having concluded that the export volumes were too little and therefore unrepresentative for the performance of a dumping calculation, the Commission was under no obligation to do so.
- (92) Furthermore, according to RFPA and Eurochem, the Commission equally failed to perform a simple comparison of ex-works prices. They submitted that the Commission achieved the finding of dumping by adjusting the export price of Russian producers by deducting inflated and erroneous percentages of SG&A and notional profit margins. Moreover, according to RFPA, to the extent that the Commission did not perform dumping margin calculations, Article 2 of the basic Regulation does not apply. Uralchem and Eurochem further claimed that should the Commission maintain its decision to deduct the SGA and notional profit of its traders from the export price, a similar adjustment should be applied to the domestic sales price charged by the domestic trader.

⁽³³⁾ Implementing Regulation (EU) No 999/2014.

- (93) The Commission did not have a finding of dumping into the EU during the RIP and it did not conduct a dumping calculation in this sense. Contrary to RPPA's claim, the Commission performed a comparison of ex works domestic and Russian export prices to third markets. While it is true that Article 2 of the basic Regulation applies to dumping calculations, the Commission disagrees with the interested parties that it would be prevented from applying those provisions by analogy when conducting a price comparison on the basis of third country prices. For the sake of making a fair and objective comparison, the Commission decided to make, among others, adjustments in line with the provision of Article 2(10)(i) of the basic Regulation. Similar adjustments were not applied to the domestic sales price via a domestic trader as the domestic traders essentially served as the domestic sales arm of the producing entities. Therefore, for the purposes of the price comparison, no SG&A and profit adjustment was warranted for the domestic sales.
- (94) Acron submitted in response to the disclosure that the deduction of profit and SG&A costs for their affiliated trader was manifestly wrong in a price comparison aimed at calculating undercutting.
- (95) First, Acron seems to confound the issue of undercutting calculation and price comparison made for the purposes of analysing likelihood of recurrence of dumping. Second, as explained in the company specific disclosure and in recital (93), the adjustments made for the affiliated importers/traders were made for the purpose of ensuring a fair price comparison, in line with the provisions of Article 2(9) and 2(10)(i) respectively.
- (96) According to Uralchem and Eurochem, the Commission failed to sufficiently justify adjustment to the export price under Article 2(10) basic Regulation. Uralchem and Eurochem further submitted in reply to the disclosure that a deduction of a 4 % notional profit margin departed from the methodology employed in the interim review case R674, where a 2,4 % notional profit margin was deducted and that such deduction was therefore not in line with Article 11(9). Acron also submitted that the notional profit for a trader in a commodity market was a clearly overstated premium, and that it should not have been deducted at all.
- (97) In the present case and in line with the company-specific disclosure, adjustment was made for SG&A costs (including mark-up) of Uralchem's and Eurochem's traders under Article 2(10)(i) as the functions of these traders were similar to those of an agent. The traders promote and sell outside of Russia the AN manufactured by the plants of the producers and the entities are designated as trader in the corporate chart of the exporting producers' group. The traders therefore clearly conduct business on behalf and in the interest of the Uralchem and Eurochem group and adjustment was therefore justified.
- (98) Regarding the notional profit actually deducted from the export prices, given the lack of cooperation from unrelated importers in the present investigation, the Commission used the profit margin of an unrelated importer from a more recent investigation on a similar nitrogen fertilizer, UAN, of 4 % ⁽³⁴⁾. Contrary to the parties' claim, the Commission did not err in using 4 % rather than 2,4 % notional profit margin in this review. In fact, the methodology used by the Commission was exactly the same in both reviews: given that there was no cooperation from unrelated importers, the Commission used the profit margin found for unrelated importers in a contemporary case concerning another chemical product. Therefore, the use of the 4 % profit was in accordance with Article 11(9) of the basic Regulation, which requires the use of the same methodology, not the same (outdated) profitability.
- (99) Some interested parties argued that the Commission should have used monthly exchange rates instead of an RIP average when making the price comparison and/or compared prices on a product-by-product type basis.
- (100) The Commission analysed these claims and found a similar price difference even if monthly exchange rates would have been used and if the comparison would have been made on a product-by-product basis. Furthermore, all product types were considered for the price comparison and even though the comparison was not made specifically per product type, almost the totality of sales to third countries were of a single product type.

⁽³⁴⁾ Implementing Regulation (EU) 2019/1688, recital 56.

- (101) Eurochem submitted several claims concerning its individual calculations of domestic sales prices, relating to the deduction of credit costs and the calculation of the allowances of the plants. Furthermore, Eurochem provided several arguments relating to its individual calculations of export sales prices, relating to alleged miscalculations of freight expenses. These claims were rejected. For confidentiality reasons, further details on the Commission's reasoning were provided in a separate document to the company only

3.3.2. *Production capacity and spare capacity in Russia*

- (102) In order to establish production capacity and spare capacity in Russia, the Commission used verified data from the sampled companies and data reported in response to the sampling forms for all the other Russian exporters. In addition, the total spare capacity of Kirovo was included in the spare capacity calculation as the spare capacity of other types of ammonium nitrate currently excluded from the application of the anti-dumping measures can very easily be used for producing ammonium nitrate currently falling under CN codes 3102 30 90 and 3102 40 90.
- (103) In line with previous investigations, the highest actual volume of production observed in the period considered was taken as a basis for the capacity calculation of the sampled companies, unless the installed capacity was higher than actual production.
- (104) Following the verifications and RCCs of the sampled producers, the data was adjusted for Acron group. The adjustment resulted from the fact that it is the production and capacity of the prilling towers, the principal bottleneck in the production of the solid AN (rather than the production and capacity relating to an intermediate product) that is decisive for determining the production and spare capacity in this case.
- (105) The Commission found that the production capacity in Russia in the RIP amounted to over 10,5 million tonnes, with a spare capacity of 440 000 tonnes. This latter figure corresponds to over 6 % of the Union consumption of in total around 6,9 million tonnes. The findings in this case were consistent with the last interim review, where production capacity in Russia was established at around 11 million tonnes, with spare capacity of 600 000 tonnes.
- (106) Furthermore, it is noteworthy that the AN production capacity in Russia further grew by an additional almost 400 000 tonnes after the RIP, following an upgrade of the existing production equipment by some of the sampled exporting producers.
- (107) Therefore, spare capacity exists in Russia and the production capacity of the Russian exporting producers further increased following the RIP. If these capacities were fully directed to the Union market, significant volumes would be exported to the Union.
- (108) In response to the disclosure, FE disputed the Commission findings on production and spare capacity in Russia. FE claimed that the production capacity of the Russian AN producers was over 11,7 million tonnes and that Russian spare capacity was 1,6 million tonnes. FE's claim was based on estimates of an expert. On the other hand, the Commission findings are based on figures submitted directly by the Russian producers to the Commission, accounting for the totality of the Russian AN production. These figures were moreover verified for three major producers. Therefore, FE's estimates cannot be accepted as more reliable than those ascertained by the Commission.
- (109) Following the disclosure, Acron and the Russian Government disputed the Commission method for calculating the capacity utilization. These interested parties argued that for plants producing both UAN and AN, availability of AN melt is a bottleneck and restraint and the capacity utilization should be calculated on that basis or on the basis of the actual AN production, but not based on the prilling capacity, which simply cannot be utilized in the absence of the raw material (i.e. AN melt) for the production of AN.
- (110) The said argument, which appears to have been raised previously, is flawed and has to be rejected for the same reasons as in the previous expiry review ⁽³⁵⁾. First, it is the capacity of the prilling towers that is the principal bottleneck and restraint in AN production as set out in recital (104). Second, in view of the possibility to easily shift the use of the AN melt from UAN to the AN production, alleged unavailability of the AN melt cannot affect the

⁽³⁵⁾ Implementing Regulation (EU) No 999/2014, recital 82.

calculation of the total production capacity and the capacity utilization for the product under review. Allocation of the AN melt for production of both UAN and AN is an internal company decision which cannot form part of any objective considerations in calculating the AN production capacity.

- (111) In response to the disclosure, RFPA argued that the Commission failed to appreciate that in the period between 2017 and RIP, Russia's production capacity has decreased by 500 000 tonnes. Moreover, according to RFPA, the Commission failed to appreciate that the size and the share of alleged spare capacities in Russia as a percentage of the Union's AN consumption has steadily declined in the last five years. Lastly, RFPA claimed that the alleged increase in Russia's production capacities by 400 000 tonnes following the RIP should also be viewed against a major increase in domestic AN consumption in Russia in 2019, compared to 2018.
- (112) The importance of existing spare capacities is not affected as such by a decrease in production capacity. RFPA's submission also ignores the fact that following the RIP, the production capacity of the Russian producers grew back to almost 11 million tonnes. Furthermore, while the spare capacities in the RIP might have decreased over the recent period, they nevertheless remain important, in particular when considered in conjunction with the newly created production capacities. Regarding the alleged growth in domestic AN consumption in 2019 compared to 2018, even if the figures provided by RFPA were to be accepted at face value, they would show that the increase in Russian AN production in 2019 (compared to 2018) outpaced the growth in domestic consumption over the same period, and as a result that the exports remain important for the Russian AN industry.
- (113) RFPA also claimed that the Commission grossly overestimated the volumes of Russian capacities that could be exported to the Union.
- (114) RFPA's claim is unsupported by any plausible evidence (see also recitals (166)-(167)) in this context. It is further recalled that the Commission analysed the likelihood of recurrence of dumping in this expiry review. The analysis set out in Section 3.3.3 demonstrates that the direction of all or majority of spare capacities of the Russian producers is a plausible threat that would be likely to materialise should the measures be allowed to lapse.
- (115) Moreover, RFPA argued that the Commission breached RFPA's rights of defence by failing to disclose the basis for the finding of the production and spare capacity in Russia. RFPA further submitted that the Commission failed to substantiate the alleged increase in capacity.
- (116) First, the final disclosure specified the source of data used by the Commission, as well as the basis for the Commission's calculation. Moreover, in case adjustments to production/capacity were made against company's calculations and estimates, due justification was provided (see recitals (102) to (104) and (106) for more details). Furthermore, for each individual sampled producer, a specific disclosure with a detailed explanation as to how the production and spare capacity were determined in the RIP as well as following the RIP was provided. In view of the confidential nature of the company specific information on production and capacity of individual producers, general disclosure of such information was however not possible.
- (117) In any event, the conclusions drawn by the Commission in this Regulation are based on considerations that were duly disclosed to the interested parties and their rights of defence were observed in full. Therefore, RFPA's claim has to be dismissed.

3.3.3. *Attractiveness of the Union market*

- (118) Consumption in the Union remained consistently high and the Union market is among the most attractive markets for Russia in terms of size, potential and geographical proximity to Russia.
- (119) The investigation showed that the Russian exporting producers developed considerable logistical and marketing capabilities that would facilitate their access to AN sales operations in the Union market. By way of example, Uralchem and Eurochem have related trading entities established in the Union (in Latvia and Germany respectively)

and Acron, and Eurochem also have related traders incorporated in Switzerland. In addition to that, Acron is affiliated with a port terminal operator in Estonia, a company named AS DBT ⁽³⁶⁾, while Uralchem owns the Riga Fertilizer Terminal LLC jointly with the Riga Commercial Port ⁽³⁷⁾.

- (120) Furthermore, countries such as Ukraine (accounting for 7 % of global AN consumption in 2016 ⁽³⁸⁾), Australia and India ⁽³⁹⁾ have imposed trade defence measures on AN from Russia. Contrary to what was alleged by the Russian industry, to date, Ukraine has not lifted the anti-dumping duties against the AN imports from Russia. These measures in other potential export markets further increase the attractiveness of the Union and would incentivize the Russian exporting producers to direct their exports at the Union, if the anti-dumping measures in the EU were allowed to lapse.
- (121) RFPA submitted that Russian AN exports did not face any major restrictions in key export markets. It further asserted that unlike during the previous expiry review ⁽⁴⁰⁾, the current additional demand for AN in third countries was a major differentiating factor.
- (122) As stated above, to date, anti-dumping (or other trade restricting) measures on Russian AN imports are in place in Ukraine, Australia and India, making these markets less attractive to Russian exporters. Furthermore, contrary to what was claimed by RFPA regarding the extra AN demand in relation to the previous expiry review, the Commission findings for the RIP as well as its prospective analysis are comparable to the Commission findings in 2014, notably with respect to the large markets such as China and US. More specifically, it was found that the Russian exports of AN to China in the RIP were essentially non-existent ⁽⁴¹⁾. Regarding the US, while it lifted in August 2016 its anti-dumping measures on AN from Russia, the shale gas boom in the country has led to the development of capacities of US producers' nitrogen fertilizers ⁽⁴²⁾.
- (123) Moreover, RFPA claimed that from 2019 until 2025 there will be a significant growth in the AN consumption in Eurasia, Latin America, Africa and Asia. According to RFPA, such increase in consumption of almost 2,5 million tonnes ⁽⁴³⁾ can easily absorb any additional spare capacity that could exist in Russia. RFPA further submitted that the Russian AN market is as large as that of the Union and it continues to grow. In addition to that, according to RFPA, Asian markets taken together by far exceeded AN consumption in Europe.
- (124) First, the projected increase in AN consumption in other regions around the world does not mean that the Union market would not remain attractive or even more attractive than those markets. Moreover, contrary to what RFPA claims, Russian AN consumption seems to have declined rather than grown (see recital (130) for more details).
- (125) Second, even if the projected increase materialized (which is far from certain), it would concern mainly regions in which the Russian exporting producers are not active or only marginally active (Africa, Asia, Oceania, North America, Middle East) ⁽⁴⁴⁾. Furthermore, there are no indications on the file suggesting that Russian AN producers would radically change their export preferences in a foreseeable future.
- (126) Third, regarding Latin America, the main target for the Russian AN exports (accounting for approximately half of the Russian AN exports), the projected increase would be outpaced by the verified rise in the Russian production capacity following the RIP. Moreover, this increase is in addition to a spare capacity of 440 000 tonnes. Furthermore, given the fact that the Russian exporting producers are in competition with other producers, based in Latin America or elsewhere, it is implausible that the increase in Latin American AN consumption would be absorbed in its entirety or even in major part by the Russian AN producers alone.

⁽³⁶⁾ <https://www.acron.ru/en/the-geography-of-business/as-dbt/>

⁽³⁷⁾ <https://www.uralchem.com/about/assets/4644/>

⁽³⁸⁾ Source: IFA, 2016 (see Annex XXIX of the Review Request).

⁽³⁹⁾ 2019 semi-annual reports of the countries on the WTO website https://www.wto.org/english/tratop_e/adp_e/adp_e.htm

⁽⁴⁰⁾ Implementing Regulation (EU) No 999/2014, recital 154.

⁽⁴¹⁾ <https://www.ceicdata.com/en/china/petrochemical-trade-fertilizer-quantity/cn-import-ammonium-nitrate> (accessed on 10 July 2020)

⁽⁴²⁾ Implementing Regulation (EU) 2018/1722, recital 76.

⁽⁴³⁾ Source: Fertecon (see RFPA submission dated 30 October 2019, p. 18).

⁽⁴⁴⁾ See Annex 26 of the Review Request – Russia Exports and Imports of AN to the World.

- (127) Lastly, Eurasia, for which further growth in AN consumption is allegedly projected until 2025 covers notably Ukraine ⁽⁴⁵⁾, one of the biggest AN consumers worldwide with the consumption of AN accounting for 7 % of the global consumption ⁽⁴⁶⁾. However, as set out above, due to the Ukrainian measures against Russian exports of AN, an increase in the AN consumption in Eurasia has only a relative relevance for the Russian producers. In view of the above, RFPA's argument has to be rejected.
- (128) RFPA further submitted that the Russian industry was not an 'export industry', since more than half of the AN was currently consumed domestically and importance of exports for the Russian AN industry was declining.
- (129) As a preliminary observation, RFPA's claim appears contradictory to its own argument that the projected increase in consumption outside of Russia could easily absorb any spare capacity that the Russian AN producers may have. In any event, the Roadmap for the development of production of mineral fertilizers for the period until 2025 ('Fertilizer Roadmap') adopted by the Russian government ⁽⁴⁷⁾ suggests that the export ratio of nitrogen fertilizers (including AN) is planned to increase by 2 % in 2025 compared to 2016. This objective has to be seen also against the backdrop of a loss or at least significant reduction in market share of the Russian exporting producers on the European UAN (another nitrogen fertilizer) market, as a result of imposition of anti-dumping measures in October 2019 by the Commission ⁽⁴⁸⁾. In addition to that, the comparison of the proportion of exports on the total Russian AN production between the RIP and the period of the last expiry review ⁽⁴⁹⁾ shows stable levels of around 40 %, which in the RIP was equivalent to almost 50 % of the Union consumption. Therefore, regardless of whether the export ratio moves moderately upwards, downwards or remains stable, there is a tangible risk of redirecting significant AN volumes to the Union market in the absence of measures, especially in view of the overall attractiveness of the Union market for Russian AN producers.
- (130) With respect to the domestic Russian AN consumption, based on the last interim review ⁽⁵⁰⁾, it reached 7 million tonnes in 2016, rising from 5,5 million tonnes in 2014. In addition, as part of the same proceedings, the RFPA submitted that in 2017, overall domestic consumption of nitrogen fertilizers further increased by 8,7 % and that the Russian consumption was expected to continue increasing slightly until 2030. However, based on verified data as well as the sampling replies, the Commission established a domestic consumption of AN of 5,8 million tonnes for the RIP. This estimation largely corresponds to the figure reported by RFPA for the RIP (5,9 million tonnes).
- (131) Hence the domestic consumption of AN decreased despite projected growth, which arguably also incentivizes the exporting producers to seek sales opportunities in the export destinations such as in the Union market.
- (132) The conclusion on the limitations of the domestic demand for AN is supported also by the Fertilizer Roadmap. According to the Fertilizer Roadmap, the development of the Russian market of mineral fertilizers (which includes AN) until 2025 will be constrained by the low level of effective demand of agricultural producers and the lack of a culture of using mineral fertilizers.
- (133) RFPA maintained that the Russian AN demand (excluding stabilised AN) reached 6,3 million tonnes in 2019 (post RIP) and that domestic AN shipments would continue their growth in 2020.
- (134) As set out above, based on the information provided by the Russian AN producers for the RIP, the domestic consumption (including for the stabilised AN) did not exceed 5,86 million tonnes. This, compared to the domestic Russian AN consumption of 7 million tonnes established for 2016, indicates a drop in domestic consumption rather than its growth. Regardless of that and even if the domestic demand were to increase at the pace suggested by RFPA, the annual increase would correspond approximately to the increase of the AN production capacity following the RIP. Moreover, a steady and upward trend in the domestic demand is not guaranteed (especially in the light of the projections outlined in the Fertilizer Roadmap) and, unlike the established Russian capacities, is purely hypothetical. Furthermore, RFPA substantiated its claim on rising domestic demand by referring to a growth in domestic sales of a

⁽⁴⁵⁾ See <https://www.oecd.org/eurasia/countries/>

⁽⁴⁶⁾ Source: IFA, 2016 (see Annex 29 of the Review Request)

⁽⁴⁷⁾ Government order of March 29, 2018 No 532, submitted as Annex 28 of the Review Request.

⁽⁴⁸⁾ Russian exporting producers of UAN (which include Acron and Eurochem) exported 613 491 tonnes of UAN in the period 1 July 2017 – 30 June 2018. Anti-dumping measures on the UAN Russian imports will likely lead to an increased pressure on the Russian producers to export other nitrogen fertilizers (including AN) in order to achieve the targeted 2 % increase in exports.

⁽⁴⁹⁾ Implementing Regulation (EU) No 999/2014, in particular recitals 72 and 96.

⁽⁵⁰⁾ Implementing Regulation (EU) 2018/1722.

single producer. The observed pattern in past domestic sales of a single producer is not necessarily representative of industry-wide trend nor indicative of the future performance of the entire industry. In conclusion, the future domestic AN demand is not likely to absorb existing Russian capacities.

- (135) RPFA further submitted that in the previous interim review it was concluded that the Fertilizer Roadmap 'does not directly point to an increase for AN' production capacity ⁽⁵¹⁾.
- (136) While the Fertilizer Roadmap might be general in nature without including any AN-specific information, it acknowledges existing limits of domestic demand for mineral fertilizers and confirms the orientation of the nitrogen fertilizer industry (which includes AN production) on exports, relevant facts in the context of this case and which corroborate the Commission findings.
- (137) The Union market remains attractive for the Russian AN exporting producers also in terms of prices. In the RIP, the price level in the Union was higher than in major third countries currently supplied by Russia. More specifically, during the RIP the average ex-works export price (133 EUR/tonne) to third countries of the three sampled exporting producers was 39 % lower than the average ex-works price of the sampled Union producers (219 EUR/tonne) (see Table 8).
- (138) As a result, the exporting producers have an incentive to redirect at least part of their current export volumes from third countries (amounting in the RIP to approximately 3,4 million tonnes of AN, which is equivalent to almost 50 % of the Union consumption) to the Union.
- (139) RPFA claimed that the drop in volume of Russian AN exports to the Union following the reduction of the antidumping duty in 2018 offered the best evidence that no increase in imports would occur should the measures be terminated.
- (140) Limited AN imports from Russia are the result of effective measures being in place and are by no means indicative of future behaviour of the Russian AN producers in the absence of such measures. The Commission thus maintained its conclusions on the attractiveness of the Union market.
- (141) Following the disclosure, RPFA submitted that the existence of trading entities in the Union did not make the Union market more attractive compared to other markets where Russian producers already have significant long-term commitments and infrastructures for AN specifically.
- (142) First, presence of trading entities in or in the proximity of the Union would facilitate AN trade flows into the Union. Second, Russian producers have also logistical capabilities developed in the Baltic states (see recital (119)). Third, RPFA failed to substantiate as to how long-term commitments in export destinations other than the Union would affect the capability of the Russian producers to penetrate the Union market and to what extent the Russian producers would be dissuaded from shifting AN sales into the Union in the absence of measures. In addition to that, it is implausible that the distribution network which the Russian producers created in, for example, Latin America would be exclusively dedicated to AN (and not to other fertilizers or other chemicals). Furthermore, acquisition of production assets and/or companies outside of Russia by the Russian producers is disconnected from the issue of attractiveness of the Union market for the Russian AN producers.
- (143) With respect to the trade defence measures in force in third countries and most notably in Ukraine, RPFA and the Russian Government submitted following the disclosure that the anti-dumping measures against the Russian imports of AN were terminated on 23 September 2020. Acron also noted that Ukraine recently terminated measures on AN from Russia and thus that Russian producers can sell AN to the Ukrainian market.

⁽⁵¹⁾ Implementing Regulation (EU) 2018/1722, recital 139.

- (144) Despite removal of anti-dumping measures, Ukraine introduced a general ban on importation of certain product categories from Russia, including the product under review, from 1 July 2019 ⁽⁵²⁾. Moreover, targeted sanctions against certain individuals and entities from the Russian Federation, including against all three sampled exporting AN producers are in place in Ukraine ⁽⁵³⁾.
- (145) RFPA submitted in response to disclosure that the Commission included additional pieces of factual information (referenced in recital (144) above) to the non-confidential file after the 5-day deadline stipulated by section 8 of the Notice of Initiation. Therefore, according to RFPA, the Commission did not act in an impartial or fair manner and thus acted inconsistently with RFPA's, EuroChem's and Uralchem's rights, in particular to good administration. RFPA further added that this failure could not be cured by a mere additional disclosure, for which interested parties were only given one day to comment.
- (146) First, the claim is based on a misunderstanding of the Notice of Initiation. Section 8 and the 5-day deadline clearly concern interest parties submissions on comments provided by other interested parties. In this case, by including additional pieces of factual information on the non-confidential file, by explaining the purpose for which it intends to use such information and by allowing the interested parties to comment on such additional disclosure, the Commission acted in conformity with Article 20 of the basic Regulation. Moreover, the information provided in the additional disclosure was in public domain and hence was available to the interested parties already prior to the additional disclosure.
- (147) Moreover, according to RFPA, the additional disclosure on the Russian AN import ban in Ukraine did not constitute an appropriate disclosure. RFPA argued that Commission simply explained what was contained in the additional documents placed on the file without explaining how these two documents would confirm its findings.
- (148) The Commission refuted such assertion. The explanations mentioned by RFPA were a summary of the relevant information in the document, which the Commission took into account when taking its decision. Thus, the additional disclosure (essentially identical to the information in recital (144) above) clearly indicated the findings and supporting documents, which had been added to the file.
- (149) RFPA further argued that the import ban did not result in a prohibition of Russian nitrogen fertilizer imports, since there have been imports of Russian-origin nitrogen fertilizers falling under the Heading 3105 (that covers Stabilized AN) in the second half of 2019.
- (150) RFPA's argument had to be dismissed. First, RFPA did not demonstrate that the import ban has not affected the product under review as a whole. While stabilised AN is part of the heading 3105, the heading covers also products other than the product under review. As such, products imported under heading 3105 may not have been part of the product concerned, thus rendering RFPA's argument ineffective. Furthermore, RFPA failed to demonstrate that the company-specific sanctions did not constitute a trade restricting measure, especially in view of the fact that all of the sampled exporting producers were mentioned on said sanctions list.
- (151) According to RFPA, there was no risk of re-direction of Russian exports from Ukraine to the EU, in case the EU's anti-dumping measures were allowed to lapse, as measures on the Ukrainian AN market against Russia have been in place since 2008, and thus sales have already been redirected a long time ago. This assertion is incorrect. As mentioned in recital (120) above, existing trade restrictive measures on certain markets such as Ukraine increase the attractiveness of the Union if the anti-dumping measures in the EU were allowed to lapse. The fact that such measures have been in place for a certain amount of time does not contradict the fact that these markets remain closed for Russian exports, and thus make other neighbouring markets, such as the Union market, attractive in case of removal of the measures.

⁽⁵²⁾ See <https://zakon.rada.gov.ua/laws/show/535-2019-п#Text>, accessed on 15 October 2020.

⁽⁵³⁾ See <https://www.president.gov.ua/documents/1762018-24362>, https://www.president.gov.ua/storage/j-files-storage/00/61/50/f5678abf43bcb17ce6b232500e9a7312_1529676085.pdf, accessed on 15 October 2020.

- (152) Regarding growing opportunities available to Russian exporters outside the Union, RFPA submitted that the Union is only one market amongst many other possibilities. It also reiterated the argument that expected increase in consumption in Latin America (Brazil, Peru) and Eurasia (Kazakhstan and Ukraine), where Russian exporters are active, as well as in other prospective export destinations, would absorb the alleged future increase in Russian capacity without even considering the expected increase in domestic consumption. Acron also argued that demand for AN is growing both domestically and globally, and referred to the seasonality of demand across different regions. The Russian Government also claimed that Russian AN producers sell increasingly more in their own market and in third countries, where they invested.
- (153) As set out in recital (118) above, the Union market is among the most attractive markets for Russia in terms of size, potential and geographical proximity and existing or prospective opportunities in other export markets do not detract from that conclusion. Seasonality of the product for different regions at different periods is equally not capable of altering the Commission assessment. Furthermore, reference is made to the Commission assessment in recitals (124) to (132) in conjunction with the fact that Ukraine remains closed to imports of AN from Russia (see recital (144)).
- (154) Concerning the Fertilizer Roadmap, RFPA maintained that the document was neither specific to AN, nor mandatory for Russian producers. Furthermore, Acron argued that the Roadmap was merely addressed to federal agencies to implement the measures listed therein.
- (155) The Commission disagrees. It cannot be denied that the document relates also to AN (pertaining to the nitrogen fertilizer family) and to the Russian producers of AN. The Roadmap is a formal document adopted by the Russian Government. Moreover, its relevance to the assessment of the Russian AN market, its producers and future developments cannot be downplayed by RFPA and Acron, in particular because the nitrogen fertilizer industry is indicated in the Roadmap as a key industry of the Russian Federation.
- (156) Moreover, RFPA argued in response to the disclosure that according to the Fertilizer Roadmap, in the period between 2020 and 2025, the export ratio of nitrogen fertilizers would remain stable at 65 %.
- (157) Reference is made to recital (129) for the position of the Commission on this point. As set out also in recital (136), this figure shows overall orientation of the nitrogen fertilizer industry (which includes AN production) on exports.
- (158) RFPA equally claimed that the Fertilizer Roadmap foresees a significant increase in domestic use of nitrogen fertilizers. Furthermore, RFPA argued that there is nothing in the Fertilizer Roadmap contradicting the claim that any excess or additional capacity will be used to satisfy a growing domestic demand.
- (159) Reference is made to recitals (132) and (134) for the Commission position. Moreover, it is observed that the claim on projected increase in domestic consumption is in direct contrast with the wording of the Roadmap, pursuant to which '[t]he development of the Russian market of mineral fertilizers until 2025 will be constrained by the low level of effective demand of agricultural producers and the lack of culture of using mineral fertilizers' and '[t]he prospects for the development of the Russian mineral fertilizer sub-sector are directly related to the use of opportunities to increase export potential' ⁽⁵⁴⁾.
- (160) Furthermore, in response to the disclosure, RFPA questioned the accuracy of figures on domestic AN consumption used by the Commission in assessing the evolution of Russian AN sales (see recitals (130) and (134)). According to RFPA, the Commission is comparing data that includes stabilised AN for 2016 (7 million tonnes) with the data for RIP (5,86 million tonnes) that is exclusive of stabilised AN.
- (161) This allegation is erroneous. Contrary to what RFPA submits, the data for the RIP, which is based on the sampling replies of all the Russian exporting producers (and largely corresponds also to data provided by RFPA) covers all products falling under the product under review, including the stabilised AN. Moreover, both data sets were provided to the Commission by RFPA and the Russian exporting producers respectively and hence their reliability can be hardly disputed by RFPA or the Russian producers themselves.

⁽⁵⁴⁾ Government order of March 29, 2018 No 532, submitted as Annex 28 of the Review Request.

- (162) Moreover, RPPA claimed that it is meaningless to compare the ex-works export prices of Russian producers with the ex-works domestic prices of Union producers. RPPA submitted that if the likely prices of Russian imports into the Union would correspond to the export prices to other destinations, there is then no incentive price-wise to redirect exports.
- (163) As set out in recital (137), the purpose of the comparison was simply to assess whether the price level in the Union was higher than in major third countries currently supplied by the Russian producers. On the basis of this comparison, the Commission found that the Union market was attractive for the Russian AN exporting producers also in terms of prices.
- (164) RPPA further submitted that the Union market is not as attractive as the Commission tries to portray. This was confirmed according to RPPA by low volumes of imports from neighbouring countries, which are not subject to any import barrier.
- (165) It is noted that the present review evaluates attractiveness of the Union market specifically for the Russian exporting producers and the export preferences of other countries are immaterial as part of that evaluation. These countries are not covered by this investigation and therefore the Commission is not in the position (or under any obligation) to conduct such an assessment.
- (166) RPPA claimed in response to the disclosure that the Commission is inconsistent in its assessment of projected behaviour of the Russian exporting producers in Latin America (see recital (126)) and in the Union (see recital (107)).
- (167) The Commission disagrees that there is any inconsistency. While the Commission rebuttal on Latin America in recital (126) concerns projected increase in consumption and its alleged absorption by Russian producers, the Commission assessment in recital (107) concerns potential direction of full Russian spare capacities without discussing any increase in Union consumption and absorption of such increase by the Russian producers.
- (168) For the reasons set out above, the arguments made by the interested parties in relation to this Section are not liable to alter the Commission assessment and have to be rejected. In general, it is also observed that the factors highlighted by the Commission in this Section 3.3.3 have to be assessed as a whole and are not to be examined in isolation in order to establish the level of attractiveness of the Union market for the Russian AN producers.

3.3.4. *Conclusion on the likelihood of recurrence of dumping*

- (169) In view of (i) the existing spare capacity and further increase in the production capacity of the Russian AN producers following the RIP, (ii) the pricing practices of the Russian exporting producers in third country markets and (iii) the overall attractiveness of the Union market, it is likely that Russian AN producers would export large quantities of AN to the Union at dumped prices, in the absence of the EU measures. Therefore, the Commission concluded that there is a likelihood of recurrence of dumping should the measures lapse.

4. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

4.1. **Definition of the Union industry and Union production**

- (170) During the review investigation period, the like product was manufactured by twenty-three producers in the Union. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

4.2. **Union consumption**

- (171) The Commission established the Union consumption by adding:
- (i) the sales of the sampled Union producers on the Union market, obtained after verification of the questionnaire replies,
 - (ii) the sales of non-sampled cooperating Union producers on the Union market, based on the data provided by the Union industry,
 - (iii) imports from Russia, based on 14(6) database;
 - (iv) and imports from all other third countries, based on Eurostat data (TARIC level).

(172) On this basis, Union consumption developed as follows:

Table 1

Union consumption

	2016	2017	2018	Review investigation period
Union consumption (tonnes)	7 318 015	7 193 921	6 707 045	6 890 413
Index (2016 = 100)	100	98	92	94

Source: Verified data of the sampled Union producers and industry data, Eurostat (TARIC), 14.6 database

(173) The Union consumption decreased by 6 % over the period considered.

(174) The decreasing trend in demand is common for the nitrogen fertilizers, which have been experiencing stable decline in the consumption rates in the past years. The trend is likely to continue in the future due to a combination of factors. Most notable are the increasing environmental and climate change pressures on farmers.

4.3. Imports from Russia

4.3.1. Volume and market share of imports from Russia

Table 2

Import volume and market share from Russia (*)

	2016	2017	2018	Review investigation period
Import volume (tonnes)	[36 000 – 40 000]	[10 000 – 15 000]	[32 000 – 38 000]	[38 000 – 43 000]
Indexed import volume (2016 = 100)	100	36	102	113
Market share (%)	[0,3 – 0,7]	[0,1 – 0,4]	[0,3 – 0,7]	[0,4 – 0,8]

Source: 14(6) data base.

(*) Excluding imports of stabilised AN from Kirovo, which are not covered by these measures

(175) Import volumes decreased by 64 % in 2017, but then increased again and by the end of the RIP they were 13 % higher than at the start of the period considered (in 2016). Imports from Russia represented a market share of [0,4 – 0,8 %] in the Union during the period considered.

4.3.2. Prices of imports from Russia

(176) The Commission established the trend of the prices of Russian imports on the basis of data recorded in the 14(6) data base.

(177) The average price of imports into the Union from Russia developed as follows:

Table 3

Import price from Russia (*)

Country	2016	2017	2018	Review investigation period
Import prices (EUR/tonne)	192	259	169	175

<i>Index (2016 = 100)</i>	100	135	88	91
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Source: 14(6) data base, excluding sales of stabilised AN by Kirovo, not subject to anti-dumping duty.

(*) Average price does not include anti-dumping duties in place.

- (178) Overall, average import prices decreased by 9 % over the period considered. Import prices increased by 35 % between 2014 and 2017, decreased by 35 % in 2018 and then increased by 4 % in the RIP.

4.3.3. Price undercutting

- (179) A price difference between the Union industry prices and Russian imports during the RIP of around 20 % could be observed on the basis of the data contained in Tables 4 and 9. Moreover, the Commission determined the price undercutting during the review investigation period by comparing (i) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level; and (ii) the corresponding weighted average prices per product type of the imports from the cooperating Russian producers to the first independent customer in the Union market, established on a cost, insurance, freight ('CIF') basis, with appropriate adjustments for anti-dumping duty and post-importation costs.
- (180) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period.
- (181) The comparison showed an undercutting of 14,3 % for the two sampled Russian exporting producers that exported AN to the Union during the RIP. When deducting the anti-dumping duty in place, the average undercutting margin would amount to 29,4 %.
- (182) RFPA claimed in their submission that a fair comparison of domestic with import prices for undercutting or underselling purposes requires adjustments for differences between prilled and granular AN. Namely, there is a price difference between granular and prilled AN due to physical differences (granule size) and due to the fact the prilled AN contains more nitrogen (34 – 34,5 %), as compared to granular AN (33,5 %).
- (183) This investigation confirmed that the product produced by the sampled Union and Russian producers is indeed the same in terms of granular size and nitrogen content. This claim was therefore rejected.

4.4. Imports from other third countries

Table 4

Import volume and market share

Country		2016	2017	2018	Review investigation period
Total other third countries	Imports (tonnes)	285 959	311 000	317 726	295 195
	<i>Index</i>	100	109	111	103
	Market share (%)	3,9	4,3	4,7	4,3
	Price (EUR/tonne)	221	208	194	210
	<i>Index (2016 = 100)</i>	100	94	88	95

Georgia	Imports (tonnes)	122 883	241 376	234 208	205 293
	<i>Index (2016 = 100)</i>	100	196	191	167
	Market share (%)	1,7	3,4	3,5	3,0
	Price (EUR/tonne)	208	195	184	196
	<i>Index (2016 = 100)</i>	100	94	88	94
Turkey	Imports (tonnes)	12 082	18 424	43 760	52 279
	<i>Index (2016 = 100)</i>	100	152	362	433
	Market share (%)	0,2	0,3	0,7	0,8
	Price (EUR/tonne)	241	206	173	194
	<i>Index (2016 = 100)</i>	100	85	72	80
Other third countries	Imports (tonnes)	150 994	51 201	39 758	37 623
	<i>Index (2016 = 100)</i>	100	34	26	25
	Market share (%)	2,1	0,7	0,6	0,5
	Price (EUR/tonne)	230	271	277	313
	<i>Index (2016 = 100)</i>	100	118	120	136

Source: Eurostat (TARIC level).

- (184) Volume of imports from other third countries increased by 3 % from 286 thousand tonnes in 2016 to 295 thousand tonnes in the RIP. These imports represented 4,3 % of the Union market share during the RIP. The main imports were from Georgia, followed by Turkey.
- (185) The average price of imports from other third countries decreased by 5 % between 2016 and the RIP from 221 EUR/tonne in 2016 to 210 EUR/tonne in the RIP. Such average import prices were on average higher than the import prices from Russia.
- (186) Georgia was the main country with more significant imports in the EU. Its market share amounted to 3,0 % in the RIP. Imports from Georgia increased over the period considered from 123 thousand tonnes in 2016 to 205 thousand tonnes in the RIP. During the period considered (except in 2017), their prices were on average higher than the import prices from Russia.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (187) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (188) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of the verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers. The data related to all Union

producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

- (189) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (190) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

- (191) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation of Union producers

	2016	2017	2018	Review investigation period
Production volume (tonnes)	7 479 220	7 358 841	6 958 592	7 030 782
<i>Index (2016 = 100)</i>	100	98	93	94
Production capacity (tonnes)	14 768 601	14 601 686	14 598 085	14 497 300
<i>Index (2016 = 100)</i>	100	99	99	98
Capacity utilisation (%)	51	50	48	48

Source: verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers.

- (192) The production volume decreased by 6 % during the period considered. The production capacity decreased by 2 % over the period considered. As a result of the stronger decrease in production volume and lesser in the capacity, the capacity utilisation decreased by 3 percentage points during the period considered.

4.5.2.2. Sales volume and market share

- (193) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share of Union producers

	2016	2017	2018	Review investigation period
Sales volume in the Union (tonnes)	6 905 971	6 770 978	6 271 050	6 463 715
<i>Index (2016 = 100)</i>	100	98	91	94
Market share (%)	94,4	94,1	93,5	93,8

Source: verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers.

- (194) Total sales of the Union industry in the Union market decreased by 6 % during the period considered. The Union industry's market share decreased by 0,6 percentage points during the period considered.

4.5.2.3. Growth

- (195) Between 2016 and the RIP, the Union consumption decreased by 6 %. The sales volume of the Union industry decreased by 6 %, which translated into a loss in market share of 0,6 percentage points.

4.5.2.4. Employment and productivity

- (196) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity of Union producers

	2016	2017	2018	Review investigation period
Number of employees	5 020	5 132	5 161	5 214
Index (2016 = 100)	100	102	103	104
Productivity (tonnes/employee)	1 490	1 434	1 348	1 348
Index (2016 = 100)	100	96	91	91

Source: verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers.

- (197) Employment of the Union industry increased by 4 % during the period considered. Due to the decrease in production (decrease of 6 % over the period considered), the productivity also decreased by 9 % over the same period.

4.5.2.5. Magnitude of the dumping margin and recovery from past dumping

- (198) As concluded in the recital (71), the Russian export sales to the Union were not considered representative of the price and the quantities. Therefore no dumping could be established during this period in the Union market and the magnitude of the dumping margin could not be assessed.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

- (199) The average sales prices of the Union industry to unrelated customers in the Union and unit cost developed over the period considered as follows:

Table 8

Average sales prices in the Union and unit cost

	2016	2017	2018	Review investigation period
Average unit selling price in the Union (EUR/tonne)	191	199	204	219
Index (2016 = 100)	100	104	107	115
Unit cost of production (EUR/tonne)	174	176	202	198
Index (2016 = 100)	100	101	116	114

Source: verified questionnaire replies of the sampled Union producers.

- (200) The Union industry's average unit sales price to unrelated customers in the Union increased steadily by 15 % and reached 219 EUR/tonne in the RIP. The increase in prices was influenced by increase in the cost of production. The cost of production increased to a similar extent, by 14 % from 2016 to the end of the RIP. The major factor having influenced the increase in the unit cost of production was the increase in the raw material price, namely, the gas, the most important raw material for ammonium nitrate representing over 60 % of the total cost of production.

4.5.3.2. Labour costs

- (201) The average labour costs developed over the period considered as follows:

Table 9

Average labour costs per employee

	2016	2017	2018	Review investigation period
Average labour costs per employee (EUR/employee)	29 870	32 194	32 651	33 129
Index (2016 = 100)	100	108	109	111

Source: verified questionnaire replies of the sampled Union producers.

- (202) The average labour costs per employee increased by 11 % over the period considered.

4.5.3.3. Stocks

- (203) Stock levels developed over the period considered as follows:

Table 10

Stocks

	2016	2017	2018	Review investigation period
Closing stocks	62 120	93 430	114 522	43 649
Index (2016 = 100)	100	150	184	70
Closing stocks as a percentage of production (%)	3	4	6	2

Source: verified questionnaire replies of the sampled Union producers.

- (204) The level of closing stocks of the sampled Union producers decreased by 30 % over the period considered. In the RIP, the level of stocks represented around 2 % of its production.

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

- (205) Profitability, cash flow, investments and return on investments developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2016	2017	2018	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	11,3	13,1	3,7	11,2

Cash flow (EUR)	69 934 432	81 683 756	30 443 832	72 041 192
<i>Index (2016 = 100)</i>	100	117	44	103
Investments (EUR)	24 830 016	34 090 768	48 685 110	39 800 944
<i>Index (2016 = 100)</i>	100	137	196	160
Return on investments (%)	38,1	46,9	12,3	38,1

Source: verified questionnaire replies of the sampled Union producers.

- (206) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry was around 11,3 % at the start of the period considered until the year 2018, when it dropped to 3,7 % (due to the rise in cost of gas and cost of the purchased allowances of the EU emissions trading system), after which it improved and reached 11,2 % by the end of the RIP.
- (207) The net cash flow is the Union producer's ability to self-finance its activities. The net cash flow followed similar trend as the profitability, it dropped in 2018 and improved in the RIP. Overall, it increased by 3 % over the period considered.
- (208) During the period considered the annual flow of investments in the AN production made by the Union industry increased by 60 %, from 25 million EUR in 2016 to nearly 40 million EUR in the RIP, which represented 28 % of the total net assets related to the product in question. Investments related to compliance improvements in relation to health, safety and environmental requirements, increase in the capacity and effectiveness of the production plants.
- (209) The return on investments is the profit in percentage of the net book value of investments. The return on investment from the production and sale of the like product followed similar trend as the profitability, it dropped in 2018 and came back to the initial 38 % level in the RIP.
- (210) As in the previous investigations, the Union industry claimed that the Union industry needed significant investment and a ROCE (a financial ratio to measure a company's profitability and the efficiency with which its capital is employed) of minimum 12 %. They have re-submitted an expert study claiming that to achieve an average ROCE of 12 %, an average pre-tax profit per tonne of 94 EUR, the equivalent of a pre-tax return on sales (ROS) margin of 36 %, is needed.
- (211) The Commission noted that given that a new injury margin is not calculated in expiry reviews, the target profit is irrelevant to this case, especially when considering the Union industry was not found to be materially injured. This claim was therefore rejected.

4.5.4. Conclusion on the situation of the Union industry

- (212) The investigation showed that the situation of the industry on a macro level decreased, in line with the overall decreasing trend in consumption (-6 % over the period considered), which influenced the decrease in the Union industry's production and sales volume.
- (213) The investigation has also shown that the situation of the industry on a micro level was overall positive. The economic situation of the Union industry was thus non-injurious and the existence of anti-dumping measures on the imports of the product under review from Russia was the main reason for such a positive situation.
- (214) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury during the review investigation period within the meaning of Article 3(5) of the basic Regulation.

4.6. Submissions of the interested parties

- (215) A cooperating exporting producer claimed that the long-term economic indicators prove that there was a lack of causal link between Russian imports and the alleged injury.

- (216) The Commission concluded that the Union industry was not materially injured. Thus, an analysis of the causal link is not warranted. This claim was therefore rejected.
- (217) The Russian Fertilisers Producers Association claimed that the macro indicators show that the Union market was characterized by an oligopoly. According to the association, the applicants now control two thirds of the market, while the Union industry virtually controls the entire Union AN market, with only negligible volumes of imports able to penetrate the Union market.
- (218) A cooperating exporting producer claimed that there were several calls on the Directorate-General for Competition to investigate anticompetitive behaviour of Union producers.
- (219) In a series of submissions, the users' associations ⁽⁵⁵⁾ claimed that the Union AN industry benefited from a double protection (the customs and anti-dumping duties). According to the associations, the current trade barriers favoured high price exports from neighbouring countries, such as Georgia and Turkey, to which no customs and anti-dumping duties apply, to the detriment of global competitors, i.e. Russia, USA etc. The current duty structure therefore favoured local high price exports, to the detriment of global competitors.
- (220) The investigation established that the Union market competition was healthy as there are twenty-three producers in the Union and none had a market share of more than 20 %. There is no clear dominant position of the market taken by the Union industry. These claims were therefore rejected.
- (221) A cooperating exporting producer and users associations ⁽⁵⁶⁾ claimed that the Union producers were using the anti-dumping measures to maintain high prices in the Union, shielding the Union industry from competition with Russian producers, thus allowing Union producers to maintain prices of ammonium nitrate in the Union at artificially high levels. According to the exporting producer, prices of ammonium nitrate in the EU have been exponentially high and generally higher than in other markets.
- (222) According to the findings of previous investigations and the current review, prices of ammonium nitrate in the Union follow price of the major raw material (gas), which represents over 60 % of the costs of production of AN. During the period considered, the price of gas was higher in the Union than in many other markets. In addition, AN prices are also driven by urea prices, which are a factor during price negotiations. Urea is a global commodity and its price is set by global supply/demand.
- (223) Furthermore, as confirmed by the investigation, the sales price and the cost of production on the Union producers followed the same trend during the whole period considered. Indeed, the trend of gas price and AN sales price was the same over the whole period considered. More specifically, during the RIP, an index of the publicly available gas price ⁽⁵⁷⁾ indicate a decrease in October 2018; AN prices indicate a decrease in March 2019. The time lag of few months is due to the fact that, at the beginning of the RIP, AN prices needed to cover the cost of production (since they were below the cost for some sampled EU producers, as reflected in decreased profit in 2018) and then followed the same decreasing trend. This claim was therefore rejected.
- (224) Users associations ⁽⁵⁸⁾ claimed in a submission that the Union industry had a market share of more than 90 %. Therefore, according to the associations, the volume of imports that were able to enter the Union market come in such limited quantities that they would be unable to exert any meaningful competitive pressure. For this reason, the Union AN market was allegedly not fully competitive.
- (225) The market share held by the Union industry was a result of their performance achieved on the Union market in the absence of unfair competition from third countries. There was no barrier preventing imports from entering and competing with the Union industry. Furthermore, the market share held by the Union producers is not an indicator allowing to conclude that the EU market lacks competition, in particular, when this market share is held by more

⁽⁵⁵⁾ Association Générale des Producteurs de Blé et autres céréales, France (AGPB), Irish Farmers' Association, Ireland (IFA).

⁽⁵⁶⁾ AGPB, IFA.

⁽⁵⁷⁾ Bloomberg; World Gas Intelligence; World Bank; spot TTF.

⁽⁵⁸⁾ AGPB, IFA.

than 20 producers and none of them having a share of more than 20 %. The anti-dumping duties in place do not create a trade barrier, but ensuring fair competition between the Union and the exporting producers of the country concerned. This claim was therefore rejected.

- (226) RFPA claimed that the anti-dumping measures had a negative impact on global trade, since they allowed Union producers to engage in injurious export activities, by taking advantage of its closed domestic market to act unfairly on export markets. According to the association, the exports of the Union producers increased the most to the countries such as India, Serbia, Australia and Ukraine, where prices are the lowest. RFPA claimed that they were made at prices, which would undercut the prices offered on the domestic EU market by the Union producers. Finally, exports to these third countries remained at significantly high level or even continued to increase during the RIP.
- (227) The Commission noted that exports of the Union producers increased by 6 % during the period considered and were at around 30 % of their total sales in the RIP. The most important export markets were China, Ukraine and Brazil. Based on Eurostat data, average export prices to these markets and in total to the third countries were higher than the prices on the Union market. This argument was therefore rejected.
- (228) Several parties claimed that the Union industry's export performance illustrates its ability to compete globally without benefitting from anti-dumping measures. This behaviour illustrated that no injury would recur, as the Union AN industry was capable of competing with any other market player, to an extent that was in fact injurious for less competitive producers worldwide.
- (229) The fact that Russian exporting producers and the Union industry may compete in other third country markets with different market characteristics does not indicate that no injury would recur should the measures be allowed to lapse, in particular, when it was concluded in recital (169) that Russian AN producers would export large quantities of AN to the Union at dumped prices. In addition, exports of the Union industry represented around 30 % of its output in the RIP. Considering the fact that the AN industry is capital intensive with high fixed cost, operating only on 30 % of its output would not be economically viable. This claim was therefore rejected.
- (230) A cooperating exporting producer claimed that Union producers received state aid from the government to help cope, inter alia, with growing environmental costs.
- (231) The Commission noted that any aid, if received by the sampled and verified Union producers, was accounted for and resulted into the net cost, as presented in the table on cost in recital (199). This argument was therefore rejected.
- (232) Users associations ⁽⁵⁹⁾ claimed that the imports not only incur customs duties, but also post-customs clearance costs and other costs associated with re-sales of the goods to distributors that are not necessarily incurred by the Union industry, but must be considered.
- (233) The Commission confirmed that the comparison of import and the Union industry's prices is done at the same level, as explained in the recital (179).
- (234) Users' associations ⁽⁶⁰⁾ claimed that AN was traded at a significant 'market premium' in the Union as compared to its' global prices. This 'market premium' directly results from the imposition of both ordinary customs and anti-dumping duties on ammonium nitrate. It is higher than the weighted average nominal customs and anti-dumping duty, since, as claimed, duties embed the nominal and the additional effect 'on the import structure and on domestic consumption by affecting exporting countries which have the best export competitiveness'. The users allocated 73 % and 27 % of the 'market premium' to anti-dumping duties and ordinary customs duties respectively.
- (235) The Commission noted that the calculation of the so called 'market premium' attributed to the anti-dumping duty is erroneous. Applicable anti-dumping duty for imports from Russia was established on the injury elimination level, whose calculation takes into the account applicable customs duties. Therefore, the calculation provided by the farmers' association double-counts the customs duty, which then they attribute to 'the market protection from the anti-dumping duty'. Furthermore, the injury elimination level that set the current duties is not a 'market premium', as argued by the users association. The injury elimination level is established to eliminate the injury suffered by the Union industry. The injury would be eliminated if the Union industry was able to cover its costs of production and

⁽⁵⁹⁾ AGPB, IFA.

⁽⁶⁰⁾ AGPB, IFA.

to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports. These claims were therefore rejected.

- (236) Users associations ⁽⁶¹⁾ further claimed that the Union AN producers were able to set prices artificially high to achieve significant profit levels. While the European Commission has found that the Union AN industry should achieve a 8 % target profit under normal market conditions.
- (237) The Commission noted that the target profit used for establishing the target price for the injury level calculation was found to be the appropriate minimum profit as established in the last interim review ⁽⁶²⁾, which the Union industry could have expected to obtain in the absence of injurious dumping. The fact that an industry in question was able to achieve even higher profit margins demonstrates the effectiveness of the measures in place and the viability of the Union industry. This claim was therefore rejected.
- (238) Users associations ⁽⁶³⁾ claimed that the high AN prices also have an influence on the calcium ammonium nitrate ('CAN') prices and similar 'market premium' was estimated for CAN (the Irish farmers use CAN, since AN is prohibited in Ireland).
- (239) First, CAN is outside the scope of current investigation. Second, the measures in place do not prevent Russian (or other third countries') companies to produce and export CAN to the Union market (no anti-dumping or anti-subsidy duties are applicable for this product); even more, the price of it in the Union market may be attractive, as claimed. Third, it is natural that the prices of nitrogen fertilisers, where the major raw material is gas, closely correlate and therefore AN and CAN prices may follow the same trends. This claim was therefore rejected.
- (240) Following the disclosure, users associations ⁽⁶⁴⁾ reiterated their claim regarding the anti-competitive behaviour of over-protected fertiliser producers and trade distortions induced by high entry barriers in the Union fertiliser market (stating that these trade barriers (customs and anti-dumping duties) muted competition, allowing Union producers, collectively, to impose excessively high prices), without providing supporting evidence. Furthermore, the allegedly excessive nature of the union prices is discussed in recital (244). The claim was therefore rejected.
- (241) Same users associations then claimed that the Commission failed to carry a comprehensive forward-looking (i.e. post-RIP) assessment considering the collapse of gas prices ⁽⁶⁵⁾ and parallel increase in AN prices (based on forecast by own market intelligence ⁽⁶⁶⁾) in the Union.
- (242) Indeed, according to the World Bank ⁽⁶⁷⁾, natural gas price in Europe started to decrease in 2019, they will begin picking-up in 2021 and will reach the level of 2016 (beginning of the period considered) in 2023. Following the findings of this investigation, as detailed in the recital (223), AN sales price followed the trend of natural gas price in the Union during the period considered. Thus, there is no reason to foresee the diverging trend in the future. No additional evidence regarding the evolution of AN prices in relation to natural gas prices in the Union was presented, allowing to question the relation of the two. This claim was therefore rejected.
- (243) The same users associations further claimed that the Commission denied, against all available facts ⁽⁶⁸⁾, the existence of a significant 'market premium' for AN in the Union, as compared to AN in the other regions.

⁽⁶¹⁾ AGPB, IFA.

⁽⁶²⁾ Implementing Regulation (EU) 2018/1722.

⁽⁶³⁾ AGPB, IFA.

⁽⁶⁴⁾ AGPB, IFA.

⁽⁶⁵⁾ Source: World Bank Commodities Price Forecast.

⁽⁶⁶⁾ Submission of AGPB and IFA of 21/04/2020 (t20.003085) and 05/10/2020 (t20.006054).

⁽⁶⁷⁾ Source: World Bank Commodities Price Forecast.

⁽⁶⁸⁾ Submission of AGPB and IFA of 05/11/2019 (t19.005682).

- (244) First, the so-called ‘market premium’ calculated by the users associations was a difference between AN spot prices (i.e. concluded sales transactions, offers, bids) in France and the Black Sea region during the period considered ⁽⁶⁹⁾. Thus, they could not be conclusive, when comparing them to the actual AN prices of concluded and verified sales transactions of the sampled Union producers ⁽⁷⁰⁾, as detailed in recital (199). Second, during the investigation period of this investigation, actual AN prices in the Union were lower than the AN spot prices in the Black Sea ⁽⁷¹⁾ (as submitted by the associations in November 2019 ⁽⁷²⁾) for all sampled companies. The two sets of prices are presented below.

Table 12

AN spot prices in the Black sea region versus the average sales price of the Union producers in the Union

	2016	2017	2018	IP
AN bulk, Black Sea FCA delivery level, Port EU (EUR/tonne)	[192 – 197]	[212 – 217]	[200 – 205]	[210 – 215]
Average sales price of the Union producers in the Union (EUR/tonne)	191	199	204	219

Source: Submission of AGBP and IFA of 05/11/2019 and verified questionnaire replies of the sampled Union producers.

- (245) As evidenced by the data submitted by the farmer’s association, and verified sales figures of the Union industry, in 2016 and 2017 the prices in the Union were actually lower than submitted by the farmer’s association as the global prices. In 2018, they were at a similar level and then in the RIP the prices in the Union were only marginally higher (by less than 9 EUR/tonne or less than 4 %). Therefore, for 3 out of 4 the periods considered, prices in the Union were either lower or at the same level as what the farmers consider the global price. The mere increase to less than 4 % above what is being considered ‘a global price’ in the RIP was not permanent, nor substantial. The alleged existence of a premium on the Union market was therefore not supported by the evidence supplied by the farmer’s association when crosschecked with the data verified during the investigation. Third, the Black Sea spot price in the RIP, resubmitted by the associations in their comments on disclosure ⁽⁷³⁾ had decreased from the one submitted in November 2019 ⁽⁷⁴⁾ (from [210 – 215] EUR/tonne originally submitted to 178 EUR/tonne. No explanation for this difference was provided. Finally, the Black Sea spot price of AN was the price of Russian and Georgian AN exporters mainly and represented prices in that one region. Thus, it could not be considered as a global price. Based on this, the claim of the parties was rejected.
- (246) Following the disclosure, the permanent mission of the Russian Federation commented that the Union industry was in a stable position and financially healthy situation. They benefitted from the decrease in gas prices. Some indicators, such as employment, unit sales price, average labour costs, and investments had a tendency to steadily increase.
- (247) It is recalled that these were, indeed, the finding of this investigation during the period considered. The likely situation of the Union industry, should the measures be allowed to lapse, was analysed separate from injury, in the recitals (298) to (303).

⁽⁶⁹⁾ Submission of AGBP and IFA of 05/11/2019 (t19.005682).

⁽⁷⁰⁾ Actual AN prices in the Union were based on the verified questionnaire replies of the sampled Union producers, where sales price was collected at ex-works (factory) level, i.e. sales value net of any transport cost to the customer’s premises; exclusive of VAT; net of credit notes and trade discounts allowed (discounts immediately deducted on the invoice).

⁽⁷¹⁾ Delivered to the EU boarder.

⁽⁷²⁾ Submission of AGBP and IFA of 05/11/2019 (t19.005682).

⁽⁷³⁾ Submission of AGBP and IFA of 05/10/2020 (t20.006054).

⁽⁷⁴⁾ Submission of AGBP and IFA of 05/11/2019 (t19.005682).

- (248) The same interested party reiterated, without providing evidence, the statement that the AN producers dominate the Union market and are almost the sole suppliers, which consequently harms end-users and agricultural sector of the Union. The measures on the AN in the Union led to distortions of competition, inflation of the AN prices in the Union and disconnection between the Union and the world prices.
- (249) Without further evidence and considering that the similar claims regarding the market share held by the Union industry and the prices of AN in the Union during the period considered were addressed in the recitals (222), (223) and (225), the statement of the party was rejected.
- (250) Several interested parties ⁽⁷⁵⁾ claimed that the analysis of the Union industry was based on a manifest error of assessment, since in its findings the Commission explicitly excluded 'stabilised' AN. More specifically, no data on 'stabilised' AN was included in micro- or macroeconomic indicators. They further claimed that, based on their presented market intelligence database, if 'stabilised' AN was included, AN consumption in the Union was materially larger than what was stated in the recital (172).
- (251) As specified in the section 4.5.2, macroeconomic indicators, among other named sources, were obtained from the verified data provided by the Union industry, based on Fertilizers Europe surveys, which included full scope of the product under review, as described in the recital (54). In particular, regarding the 'stabilised' AN, data on AN with phosphorus and/or potassium nutrient was collected in these surveys.
- (252) In terms of the Union consumption, verifications of the sales of the sampled and non-sampled Union producers on the Union market confirmed that both data sets included the full scope of the product under review, as described in the recital (54). In particular, regarding the 'stabilised' AN, data on AN with phosphorus and/or potassium nutrient was collected in the Fertilizers Europe surveys and questionnaires of the Union producers. Furthermore, when adding the sales of AN, NK (AN including potassium nutrient) and NP (AN including phosphorus nutrient) ⁽⁷⁶⁾ of the Union producers in the EU from the market intelligence database provided by these interested parties ⁽⁷⁷⁾, the sales volumes were largely in line with the total sales volumes of the Union producers provided in the recital (193).
- (253) Likewise, import statistics from Russia and all other third countries were based on TARIC code level, therefore they included all codes indicated in the recital (54). It is therefore confirmed that the analysis of the Union industry and Union consumption covers full scope of the product under review defined in the recital (54). The claim was therefore rejected.
- (254) Same interested parties claimed that the Commission made a manifest error of assessment, when it determined the sample of Union producers. Namely, the sample did not reflect the costs of production of the Union industry as a whole, since two sampled producers (AB Achema and Grupa Azoty Zakłady Azotowe Pulawy S.A.) allegedly incurred artificially high natural gas costs. They also claimed that there was nothing in the findings of the investigation indicating whether the gas prices paid by these two Union producers were representative of the Union gas market prices and how this point was investigated.
- (255) The sample consist of three Union producers in Lithuania, Poland and France and is representative of the situation of the Union industry as a whole, in accordance with Article 17(1) of the basic Regulation. In this regard it should be clarified that a standard verification practice comprise the check if the raw materials prices reported in the questionnaire replies are at arm's length (namely, the raw materials recorded in the cost of production are in line with the free market value). The costs of the raw materials provided by two sampled Union producers were therefore crosschecked with publicly available information ⁽⁷⁸⁾ and were in line with the prevailing market prices and their evolution in the Union during the whole period considered. While gas prices and other gas sourcing costs may vary from one Member State to another, the findings of the Commission were based on a representative sample of three Union producers. Considering that there is a significant production of AN in Poland and Lithuania (31 % of

⁽⁷⁵⁾ Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot') and Uralchem JSC.

⁽⁷⁶⁾ Volumes reported under AS (Ammonium Sulphate Nitrate) and OSTRN (Other Straight Nitrogen) indicated only estimated deliveries (= Consumption – Imports), which were not taken into account, since imports in this source were based on 8 digit CN code and may have included other products (while the Commission is using 10 digit TARIC code).

⁽⁷⁷⁾ Comments on General disclosure document by Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot') and Uralchem JSC, t20.006223.

⁽⁷⁸⁾ World Bank Commodities Price Forecast; AMIS Market Monitor, Fertilizers Outlook.

the total Union production and 43 % of the cooperating Union producers of AN in the RIP), the Commission was correct to conclude that a finding including the data provided by the two sampled Union producers sourcing gas was representative for the whole Union industry. The claim was therefore rejected.

- (256) The same interested parties further claimed that recital (200) refers to an increase in the raw material price, namely natural gas, as the reason behind increase in the cost of production of the Union industry. However, the Commission should have disclosed the supporting data for this statement, namely the natural gas purchase prices of the sampled Union producers. They claimed that publicly available gas prices in the Union do not address concerns about the evolution of the natural gas purchase price of the sampled Union producers. They added that the Commission should have also confirmed to what extent the findings of the recital (200) apply to Yara France, which does not purchase gas for the production of AN and that the statement (of same recital) claiming that gas is the most important raw material for production of ammonium nitrate representing over 60 % of the total cost of production does not relate to all three sampled Union producers.
- (257) The Commission confirms that the cost of production per tonne stated in the recital (200) is the weighted average cost of production per tonne of all three sampled Union producers. The fact that two of the sampled Union producers are vertically integrated and produce the intermediate raw materials for production of AN, like ammonia, on the site, while the third sampled Union producer purchases it, does not contradict the statement that the natural gas is the most important raw material for production of ammonium nitrate representing over 60 % of the total cost of production. Namely, the cost of production of ammonium nitrate is either directly driven by the natural gas cost (for the vertically integrated producers) or, by the cost of ammonia, which is an intermediate raw material produced from natural gas and which price is also driven by the natural gas price. The costs of the raw materials provided by the sampled Union producers in their questionnaire replies were crosschecked with publicly available information ⁽⁷⁹⁾ and were found in line with the prevailing market prices and their evolution in the Union during the whole period considered. The claims were therefore rejected.
- (258) The same interested parties also claimed that the Commission should have explained on what basis they concluded and verified that there was a time lag in the Union between the reduction of gas prices and reduction of AN prices during the RIP and why (recital (223)).
- (259) It should be clarified that the AN prices of the sampled Union producers in the RIP were collected on a transaction basis in their questionnaire replies and therefore could be calculated for each month of the RIP. The evolution of the gas price in the Union on a monthly basis was available from the World Bank ⁽⁸⁰⁾. The two sets of data were the basis for the conclusion in the recital (223). The reason for a time lag of few months, as explained in that recital, was that, at the beginning of the RIP, AN prices needed to cover/catch-up the cost of production first (i.e. they were increasing, since they were below the cost of production for some sampled EU producers, as reflected in decreased profit in 2018) and then followed the same decreasing trend.
- (260) Another Russian exporting producer claimed the contrary, that the cost of natural gas and AN prices follow different trends. As evidence of its statement it presented AN spot prices (i.e. concluded sales transactions, offers, bids) in different regions in comparison to the natural gas prices published by the World Bank and IMF.
- (261) First, AN spot prices could not be conclusive when comparing them to the actual ex-works AN prices of concluded and verified sales transactions of the sampled Union producers, as detailed in recital (199), since they included prices of offers and bids that were not necessarily settled. Furthermore, the spot prices come from only one Member State, namely France, whereas the actual prices used by the Commission come from a representative sample of three Member States, namely France, Lithuania and Poland. Second, as explained in the same recital, during the period considered, the increase in AN prices in the Union was influenced by increase in the cost of production, namely natural gas. As further detailed in recital (257), the cost of the raw materials of the sampled Union producers

⁽⁷⁹⁾ World Bank Commodities Price Forecast; AMIS Market Monitor; Fertilizers Outlook.

⁽⁸⁰⁾ World Bank Commodities Price Forecast.

(including natural gas) were in line with the prevailing market prices and their evolution in the Union during the whole period considered. Therefore, the cost of natural gas and AN prices followed the same trend in the Union during the period considered. The claim was therefore rejected.

(262) The same Russian exporting producer claimed that the AN prices in the Union found in this investigation (recital (199)) lacked explanation on how they were calculated. The party claimed that these prices were ex-works prices in Poland and Lithuania. Furthermore, the party alleged that the Commission deducted SG&A and profit of the related traders of these Union producers to construct the ex-works prices.

(263) It should be clarified that the AN prices of the sampled Union producers were collected in their questionnaire replies. These prices were not calculated by the Commission, instead, they were verified during respective verification visits at the Union producers. The AN prices in the recital (199), as indicated under table 8, relate to the verified data of all three sampled Union producers. The questionnaire with instructions for the sampled Union producers where these prices were collected is available on DG TRADE's page of the case ⁽⁸¹⁾. It indicates that the sales prices are collected at an ex-works (factory) level, (i.e. sales value net of any transport cost to the customer's premises), exclusive of VAT, net of credit notes and trade discounts. No SG&A and profit cost of the related traders is deducted. Therefore, these are ex-works prices of all three sampled union producers. The claim was therefore rejected.

(264) The same Russian exporting producer claimed that the average export prices of the Union producers to third country markets could not be higher than their prices on the Union market, as detailed in recital (227). It argued that the prices of the Union producers to the third country markets were potentially dumped, referring to the findings of the Australian government imposing the anti-dumping duty on imports of ammonium nitrate from Sweden in 2019 ⁽⁸²⁾.

(265) As stated in recital (227) the AN prices of the Union producers to the third country markets were based on Eurostat data. ⁽⁸³⁾ On this basis, prices to China, Ukraine and Brazil were respectively 426 EUR/tonne, 308 EUR/tonne and 375 EUR/tonne FOB delivery level in the RIP. The average export price to the third countries (in total) were 397 EUR/tonne FOB delivery level during the same period. These prices were higher than the average sales price of the Union industry in the EU in the RIP. The anti-dumping duties imposed on Sweden in Australia relate to one Member State only and different period and therefore did not put in question the Commission's findings in this review. The claim of the party was therefore dismissed.

(266) Several interested parties ⁽⁸⁴⁾ also claimed that the Commission should have explained on what basis they concluded and verified the statement that 'in addition, AN prices are also driven by urea prices, which are a factor during price negotiations' (recital (222)).

(267) This particular statement was provided in the questionnaire reply of a sampled Union producer ⁽⁸⁵⁾. Urea is a global commodity, whose price also follows the price of the natural gas, its main raw material ⁽⁸⁶⁾. Based on this, the Commission concluded that, among other factors, the price of urea is a factor driving the AN price.

(268) The same interested parties also claimed that the Commission should have explained how the conclusion that 'the price of gas was higher in the Union than in many other markets' was reached (recital (222)).

⁽⁸¹⁾ http://trade.ec.europa.eu/tidi/case_details.cfm?id=2410

⁽⁸²⁾ https://www.industry.gov.au/sites/default/files/adc/public-record/473-066_-_notice_-_adn_2019-057_-_findings_in_relation_to_a_-_dumping_investigation.pdf

⁽⁸³⁾ CN8 digit code level including all the codes covering the product under review.

⁽⁸⁴⁾ Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot') and Uralchem JSC.

⁽⁸⁵⁾ As indicated in the questionnaire reply available to interested parties, t19.006120.

⁽⁸⁶⁾ EU Agricultural Markets Briefs, Fertilisers in the EU, European Commission, DG AGRI, t20.004387.

- (269) This conclusion was reached based on the publicly available quarterly report on European Gas Markets ⁽⁸⁷⁾, where the EU average industrial retail gas price of around 2,5 Euro cent/kWh in the RIP was compared to the prices of some important trade partners of the EU and significant AN producers, including Russia. As reported, industrial retail gas prices were below 1 Euro cent/kWh in Russia and around 1,2 Euro cent/kWh in the United States during the RIP.
- (270) Several interested parties ⁽⁸⁸⁾ further claimed that the Commission made a manifest error of assessment when it determined the sample of Union producers. Namely, it failed to acknowledge that injury on UAN case ⁽⁸⁹⁾ could have an impact AN.
- (271) The fact that AN production could impact all upstream (ammonia, nitric acid), downstream (UAN) and related (CAN, A5, urea) production lines (as referred in recital (350) does not contradict to the fact that injury (reflected in different economic indicators including the indicator of the cost of production) could be attributed distinctively to the specific product. Furthermore, the Commission found no injury to the Union industry of AN during the RIP and based its conclusion that measures should not be allowed to lapse in its analysis of likelihood of recurrence of injury. Thus, the Commission found that the claim was not only incorrect but also irrelevant because of the facts of this case. The claim was therefore rejected.
- (272) Several interested parties ⁽⁹⁰⁾ reiterated the claim that the Commission made a manifest error of assessment when it determined the sample of Union producers. According to those parties, the sampled Union producers were not representative of the full scope of the like product, since they did not produce 'stabilised' AN and industrial grade AN and therefore only partly reflected the Union industry. Furthermore, they claimed that the Commission selected two Union producers which were affiliated to Russian producers: Grupa Azoty Zakłady Azotowe Pulawy S.A. was affiliated with the Russian producers; while another of the sampled Union producers was engaged in the purchases of Russian AN for importing it worldwide, including the Union market.
- (273) As stated in the recital (33), the sampled Union producers were the largest Union producers of ammonium nitrate in terms of the production and sales volumes. They accounted for 30 % of total production of the like product (that is, including 'stabilised' AN and industrial grade AN) in the Union in the RIP. The sample of Union producers was therefore representative of the situation of the Union industry as a whole, in accordance with Article 17(1) of the basic Regulation. Moreover, there is no legal requirement that the sample of producers cover all product types investigated for the sample to be representative. In this sense, the sample included Union producers making product types directly competing with the subject imports. Finally, in the present case the Commission found no injury to the Union industry. The claim that the sample of Union producers was not representative of the situation of the Union industry was therefore dismissed.
- (274) In relation to the alleged affiliation of two of the sampled Union producers with Russian producers, the Commission found based on the information collected during the investigation that both sampled companies were considered Union producers within the meaning of Article 4(1) of the basic Regulation. In relation to the Grupa Azoty Zakłady Azotowe Pulawy S.A., a Russian exporting producer owned a minority share of this Union producer via the holding company and there were no commercial links between them. Regarding the other sampled Union producer, as explained in recital (309), the trading of Russian AN was made by entities of the group to which the Union producer belongs and were not material in relation to that sampled Union producer ⁽⁹¹⁾. There were no reasons for excluding these companies from the definition of the Union industry and therefore the claim was dismissed.
- (275) One Russian exporting producer claimed that the capacity utilization of the Union producers was incorrectly calculated, since it was based on the prilling capacity. The two of the sampled Union producers produced UAN and AN, which used the same intermediate product, ammonium nitrate melt. The party claimed that for these producers

⁽⁸⁷⁾ Quarterly report on European Gas Markets, issue 4, fourth quarter of 2019, European Commission, DG Energy, t20.003589.

⁽⁸⁸⁾ Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot'), Uralchem JSC and Acron group.

⁽⁸⁹⁾ Implementing Regulation (EU) 2019/1688.

⁽⁹⁰⁾ Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot') and Uralchem JSC.

⁽⁹¹⁾ As can be seen from the annual reports of the group, revenues generated by this group (around 75 % of the revenues were from all the fertilizer sales) in Latin America were less than 10 % of all group revenues.

the availability of ammonium nitrate melt is a bottleneck and that the capacity utilization for such producers should be calculated based on the available AN melt or based on actual production of AN. This claim was rejected for the reasons as explained in the recital (110).

- (276) The same Russian exporting producer claimed that the Commission's price comparison (undercutting calculation) was static and did not take into account its evolution over time, nor its combination with other relevant facts (like price movements, increases in market shares, product substitutability, the product types with respect to which it had made a finding of price undercutting). Such an examination should reveal price movements and trends in the relationship between the prices of the imports and those of domestic like products.
- (277) The undercutting calculation, as standard, was performed for the RIP period and related to the product types (PCN – product control numbers established for this investigation) that were traded by the Russian producers. The undercutting calculation was based on limited import quantities during the RIP, which had been found to be unrepresentative. Thus, any conclusion drawn from this calculation can only have limited relevance. Consequently, future projections of the relationship between the prices of the Russian imports and those of the domestic like products could not be performed on this basis. The claim was therefore dismissed.
- (278) The same Russian exporting producer claimed that the deduction of antidumping duty was not warranted in the undercutting calculations for a commodity product, when the price is set by supply and demand, without explaining why that would be the case.
- (279) For the undercutting calculation described in the section 4.3.3, as explained in recital (181), the comparison of Russian export prices to the Union to the prices of the Union producers was done using two methods, one where the anti-dumping duties in place were taken into account and one where they were not. For the potential undercutting (in the absence of measures) calculation described in recital (294), the comparison of Russian export prices to the third countries to the prices of the Union producers did not include anti-dumping duties, as this was a part of the prospective analysis. The claim was therefore dismissed.
- (280) Several interested parties claimed that the Commission relied on inaccurate and hypothetical calculations to allege that Russian imports would enter the Union market at injurious price levels:
- (i) the Commission should also ensure that the price for the Russian AN was compared with the price of Union producers at the same level of trade and thus the import price considered for undercutting purposes cannot be adjusted for the SG&A and profit of related trading entities, nor for the credit cost;
 - (ii) a fair comparison of prices for undercutting purposes required adjustments for differences between prilled and granular AN;
 - (iii) the likely price level of Russian imports should not be compared to the actual sale price of the Union industry, since it was artificially inflated due to the lack of competition caused by market barriers;
 - (iv) the calculation of the undercutting margin should have been performed solely based on the sales of stabilised AN by Uralchem to the Union;
 - (v) there was no justification for exclusion of imports of above two million tonnes, when estimating the likely price levels of imports from Russia, as referred in the recital (294).
 - (vi) the Commission should not use EU sales allowances if EU sales were found not to be representative. Furthermore, when using such EU allowances, the Commission failed to calculate them correctly, notably concerning transport related costs to the EU border.
- (281) Regarding the undercutting calculation using the actual Russian export sales to the Union market, the Commission underlined that its decision to extend the measures in place do not rely on the undercutting found during the RIP. First, the Commission found that the Union industry was not injured during the RIP. Second, as acknowledged by several parties, the undercutting was based in limited import quantities during the review investigation period, which were found to be unrepresentative. Therefore, the finding of undercutting during the RIP has limited relevance as regards the situation of the Union industry during the RIP.

- (282) In relation to the undercutting calculation referred to in recital (294), that calculation aimed at estimating the potential undercutting level in the future in case measures were allowed to lapse. Thus, this potential undercutting level and the constructed CIF prices (based on the export prices to third markets) served only as the proxy. It was an exercise conducted for the purposes of establishing a likely import price. Having said that, regarding point (i) summarised in recital (280), the adjustments disputed by the interested parties would not materially affect the conclusion that the Russian imports would likely enter the Union market at dumped prices in the absence of the anti-dumping measures and would still considerably undercut the prices of the Union producers ⁽⁹²⁾.
- (283) Points (ii), (iii) and (iv) summarised in recital (280) have been addressed in recitals (183), (244) and (73), respectively. Regarding point (v) the Commission did not exclude imports of above two million tonnes. The information provided in recital (294) and related footnote in fact means that the Commission considered the sampled Russian exporting producers' exports to all destinations when they were above two million tonnes in the RIP. Concerning point (vi), the Commission only used certain transport related costs, which remained valid irrespective of the representativity of the sales volumes and prices to the EU. These claims were therefore rejected. For confidentiality reasons, the details on alleged miscalculations concerning freight costs were provided in a separate reply to the company. The Commission partly agreed with the claims on calculations raised by the company. However, the resulting change in the CIF level of less than 1 % at country-wide level did not have any material effect on the Commission's findings regarding undercutting.
- (284) Following the arguments of the interested parties that the Commission failed to disclose duly the method for constructing the CIF values for the sampled exporting producers, the Commission made additional disclosures on 30 September and 21 October 2020 addressing this claim accordingly.

5. LIKELIHOOD OF A RECURRENCE OF INJURY

- (285) The Commission concluded in recital (214) that the Union industry did not suffer material injury during the review investigation period. Thus, the Commission further examined the likelihood of recurrence of injury originally caused by dumped imports from Russia if measures were repealed.
- (286) To establish the likelihood of recurrence of injury should the measures be repealed, the following elements were analysed: (a) production capacity and spare capacity in Russia, (b) likely price levels of imports from Russia in the absence of anti-dumping measures and (c) attractiveness of the Union market.
- (287) Production capacity and spare capacity in Russia
- (288) The production capacity in Russia during the review investigation period was over 10,5 million tonnes, with an estimated spare capacity of 440 000 tonnes. This spare capacity found in Russia would amount to 6 % of Union consumption. If fully directed to the Union market, significant volumes could still be exported and have a particularly strong effect on some of the Member States neighbouring with Russia.
- (289) In view of the Roadmap for the development of production of mineral fertilizers for the period until 2025 adopted by the Russian government ⁽⁹³⁾, the production of nitrogen fertilizers (AN being one of the most important ones) is foreseen to increase ⁽⁹⁴⁾, with the increasing export share in the volume of output, reaching 65 % in 2025. This indicates that the larger part of Russian nitrogen fertilizers industry is export driven.
- (290) RFPA claimed that the Roadmap is not aimed at promoting AN export to the Union.
- (291) The Roadmap foresees an increase of production of nitrogen fertilizers to 11,7 million tonnes in 2020 and 12,3 million tonnes in 2025. Export share in volume of output of nitrogen fertilizers is aimed to increase to 65 % in 2020, which indicates that the bigger part of Russian nitrogen fertilizers industry is export driven. It also notes that the demand of mineral fertilizers (AN being one of the most important ones) on the Russian market will not

⁽⁹²⁾ Undercutting margins would still be in a range of 8 – 28 % if no deduction of the SG&A and profits of the exporting producers' related selling entities in the EU, nor credit costs would be made.

⁽⁹³⁾ Government order of March 29, 2018 No 532.

⁽⁹⁴⁾ From 9,5 million tonnes in 2016 to 11,7 million tonnes in 2020 and 12,3 million tonnes in 2025.

exceed 4-5 million tonnes (calculated as 100 percent of the active substance) and will not exceed 40 percent load on existing capacity. The development of the Russian market of mineral fertilizers until 2025 will be constrained by the low level of effective demand of agricultural producers and the lack of a culture of using mineral fertilizers. As discussed in recital (296), the Union market is attractive to Russian exporting producers. Considering this together with the figures discussed above, even if the Roadmap does not explicitly target the Union, the increases discussed therein potentially may be exported to third country markets, including to the Union market, especially if measures were to be lifted.

(292) This claim was therefore rejected.

5.1. Likely price levels of imports from Russia in the absence of anti-dumping measures

(293) In recital (169) it was concluded that it is likely that the Russian exporting producers would export large quantities of AN to the Union should measures be allowed to lapse and that these exports would likely be made at dumped prices.

(294) To consider the price level of Russian AN without the measures, an undercutting calculation aimed at estimating the potential undercutting level in the future in case measures were allowed to lapse was made using the cooperating exporting producers' prices to third countries ⁽⁹⁵⁾ and found a significant undercutting of 24,0 %. At these price levels, there would be a sharp increase of imports of AN from Russia in a small period of time.

(295) Considering these elements together, the Commission found that it is likely that Russian imports would enter the Union market at dumped prices and would undercut Union producers' prices, thereby exerting significant price pressure on Union producers, should the measures be allowed to lapse.

5.2. Attractiveness of the Union market

(296) As mentioned in recitals (118) and (137), the Union market is attractive in terms of its size and prices. The Union is the largest AN market in the world. The Union market remains attractive in terms of price ⁽⁹⁶⁾. The Russian exporters have well-established fertilizers distribution channels in the Union, which facilitates logistically the exports. Also, import prices from Russia are likely to undercut the Union industry's prices on the EU market, which further indicates that the Union market is attractive for Russian producers.

(297) As mentioned in recital (120), countries such as Ukraine, Australia and India ⁽⁹⁷⁾ have trade defence measures imposed on ammonium nitrate from Russia. Should the current measures lapse, these measures would make the Union market even more attractive for Russian producers, which encounter more difficulties to export to other third markets.

5.3. Impact on the Union industry

(298) As concluded in the recital (169) above, it is likely that Russian AN producers would export large quantities of AN to the Union at dumped prices should the measures be allowed to lapse. Moreover, it can be reasonably expected that, as a consequence of the attractiveness of the Union market as described in recital (296) should the measures be repealed, at least part of the spare capacity in Russia would be directed to the Union market. When considering the likely future evolution of Russian export prices, as explained in recital (294), it is likely that the prices of Russian imports would considerably undercut Union industry prices.

⁽⁹⁵⁾ Import volumes of above 2 million tonnes.

⁽⁹⁶⁾ Latin America was the largest market for exports of the cooperating Russian companies. Import prices from the cooperating companies to Latin America were lower than to the EU.

⁽⁹⁷⁾ 2019 semi-annual reports of the countries on the WTO website https://www.wto.org/english/tratop_e/adp_e/adp_e.htm

- (299) In this regard, in terms of volumes, the lapse of the measures would very likely allow Russian exporting producers to rapidly gain market shares in the Union market. The Union industry would then face an immediate drop in its sales volumes, market share and an increase in its fix costs per unit. Indeed, the AN industry is a capital intensive industry which needs to maintain a certain volume of production to keep the fixed costs at sustainable levels. The increase in fixed costs following a decrease in production and sales will negatively affect the profitability.
- (300) Furthermore, as detailed under recital (174), the consumption of AN is expected to decrease further. The Union industry therefore competes with Russian imports in a shrinking market. In turn, this is very likely to exert a downward pressure on prices with a negative impact on the Union industry's profitability and financial situation. In parallel, the Union industry would be precluded from making the necessary investments to meet health, safety and environmental standards of the EU.
- (301) All those factors combined would lead to a situation of recurrence of injury.
- (302) A simulation based on a scenario where the Union industry would have to match the Russian import price (at the levels currently observed to third countries including the customs duty and post importation cost) while maintaining its sales volumes and incurring the same cost as in the RIP indicated that the profitability of the Union industry would turn to a loss of [-25 – -29 %].
- (303) Based on the above, the Commission concluded that that there is a likelihood of recurrence of injury should the measures be repealed.

5.4. Submissions of interested parties

- (304) The Russian Federation claimed that the Union producers tightly controlled the AN sector, since they have a high market share, increasing production and sales. According to the Russian Federation, Union producers were therefore ready for elimination of the duties on their Russian competitors, as confirmed by the growing exports of AN from the Union.
- (305) The investigation confirmed that despite the decreasing production and sales volumes, the Union industry had a market share of above 90 % during the whole period considered. However, this does not put in question the Commission's finding that of the increase of dumped imports from Russian if measures were lifted would cause material injury to the Union industry. The investigation showed that AN market is price sensitive. For that reason, the increase of dumped imports from Russia (if the measures were to be lifted) would make the Union industry lose the sales volume and consequently, production volume, necessary to keep the fixed costs at a competitive level (the fixed cost will increase, as it will be spread over lower volume produced, with a negative impact on the profitability). As explained in recitals (298) to (302), the Union industry would face an immediate drop in its sales volumes, market share and an increase in its fix costs per unit. The profitability level would significantly drop to negative. Indeed, this was observed in the original investigation where the Union producers had to reduce their prices to well below cost in order to maintain a certain level of sales to be able to compete with Russian imports that were undercutting the Union industry's prices. This led to the injury to the Union industry that consisted of the decline in sales and market share, and, most significantly, in the fall on the Union's industry's prices and profits. This claim was therefore rejected.
- (306) RPPA claimed that the attractiveness of the Union AN market was overstated. The EU in this context was not distinguished by any additional advantages. For example, transport cost from Russia (Baltic) to Brazil, US and Central America was almost the same as the cost of transportation to the EU. Even more, due to the safety restrictions and a requirement in the UK to ship AN in small vessels only, often transportation cost was higher to the EU than to Brazil.
- (307) This claim was found to be factually incorrect. The investigation showed that transport cost of the cooperating exporting producers to other third countries were nearly 30 % higher than to transport costs to the Union. This claim was therefore dismissed.

- (308) RFPA further claimed in a submission that one of the largest Union producers re-sold AN purchased in Russia to a destination outside the Union. According to RFPA this was evidence that Union producers were engaged in double dealing, to the detriment of Union farmers. Anti-dumping measures were not supposed to result in the growth of the Union industry on global export markets, by using proceeds from the increased sales in Union to engage in purchases of the allegedly dumped products for re-sale in the global market.
- (309) The investigation demonstrated that the re-sales of AN purchased from Russia referred to by RFPA were made by non-Union and Union entities of a group a Union producer belongs to. These re-sales were made to Latin America. As can be seen from the annual reports of the group, revenues generated by this group (around 75 % of the revenues were from fertilizer sales) in Latin America were less than 10 % of all group revenues. It can be seen from the same group reports, that the major revenues of the group are still generated in Europe (more than 30 %). Therefore, these re-sales of AN purchased from Russia by the group companies could not have benefited this Union producer in its performance in the global export markets and to the detriment of the Union farmers. The claim was therefore rejected.
- (310) RFPA then claimed that these re-sales were a long-term commitment to act as a distributor of Russian AN on export markets outside the European Union and therefore significantly reduced any risk of redirection of exports following the termination of the anti-dumping measures. This long-term commitment locked volumes of Russian AN outside the EU market and should be considered as evidence of an absence of likelihood of recurrence of injury, should the anti-dumping measures be allowed to lapse.
- (311) The Commission noted that the behaviour of the group to which the Union producer belongs does not reflect the behaviour of the Russian exporting producers should the anti-dumping measures lapse because these are independent economic operators. For instance, other capacities from this or other exporting producers could be (re) directed to the Union, should the measures be allowed to lapse. Furthermore, agreements concluded in the context of applicable anti-dumping duties in the Union could be renegotiated should the measures be allowed to lapse and an attractive market became more available to Russian AN producers. This claim was therefore dismissed.
- (312) RFPA further claimed that the increased AN consumption in the Russian domestic market and the existing distribution networks of Russian AN producers outside the EU, served as evidence of an absence of likelihood of recurrence of injury, should the anti-dumping measures be allowed to lapse.
- (313) Analysis of the AN consumption on the Russian domestic market in recitals (130) to (134) above concluded that an increase was not guaranteed. In addition, the existing distribution networks in other third countries do not prevent exporters from using the existing or establishing new distribution networks in the Union market. This claim was therefore dismissed.
- (314) A cooperating exporting producer claimed that the production capacities in Russia were fully utilized. Therefore, it was not possible to significantly increase the production of ammonium nitrate and its exports to the EU. The demand for ammonium nitrate has significantly increased worldwide and would continue to increase. Fertilizer demand in Latin American and APAC regions were driving up the ammonium nitrate market growth due to the expansion of agricultural lands in these countries. Demand for ammonium nitrate was also growing in Russia. At the same time, market growth for demand in the EU was slower compared to other regions. Therefore, should the measures be allowed to lapse, there would be no significant increase of imports of ammonium nitrate from Russia.
- (315) In view of the Union market size, geographic proximity, prices, likely undercutting found, as well as the fact that some of the Russian exporters have well-established distribution channels in the Union facilitates logistically the exports, the Union market was considered attractive for Russian producers. The Commission considered that the projected consumption in the countries in question was at a level which would only allow for the partial absorption of the Russian producers' spare capacity.
- (316) A cooperating exporting producer claimed that the investments in Brazil and other third countries by various Russian exporting producers showed the attractiveness of Brazil and other third countries by contrast to the Union.

- (317) The Commission noted that these investments confirm the willingness of Russian producers to export to third countries. However, these investments were made while measures were in place in the Union. They do not indicate that these markets would be more attractive than the Union market should the measures be terminated.
- (318) Several interested parties claimed that the measure on import of AN into the EU has been in force for more than 25 years and that such situation was unprecedented and did not comply with the nature of anti-dumping measures.
- (319) The basic Regulation does not establish a maximum time for the application of anti-dumping measures. In accordance with Article 11(2) of the basic Regulation, the Commission found that there was a likelihood of recurrence of dumping and of injury should measures be allowed to lapse. Therefore, the claim of these parties was rejected.
- (320) Following the disclosure, several interested parties ⁽⁹⁸⁾ claimed that the Commission failed to consider the actual position of Union producers in the Union market, which were large groups with strong distribution networks, protected by import barriers and currently able to charge premiums for AN as compared to global markets, including Black Sea, Baltic and Brazil. They claimed that the existing antidumping measure represented an over-correction because the Union industry, while using only half of its production capacity, achieved profit of above 8 % of the Union industry's target profit and high return on investments.
- (321) First, the fact that some of the Union producers belong to some large groups does not necessarily translate into the ability to charge price premiums. Furthermore, contrary to what was claimed, the mere existence of four large groups and various smaller producers does not in itself make them an oligopoly.
- (322) Second, the premium alleged charged by these interested parties was found to be the difference between AN spot prices (i.e. concluded sales transactions, offers, bids) with different delivery terms in France and the Black Sea, Baltic, Brazil and other regions, i.e. the basis of comparison was not at the same delivery level, as presented by these parties. This is particularly important as the parties themselves acknowledge in their comments that transport of AN is costly. Furthermore, no conclusion can be reached on the basis of those prices, as detailed in recital (199), since they included prices of offers and bids that were not necessarily settled and relate to only one Member State. Prices of AN vary across the Union, as implicitly acknowledged in by Acron in their comments reproduced in recital (262), when arguing that Union prices reported by the Commission are too low and thus must come only from Poland and Lithuania. Third, AN prices of the Union producers in the Union, as found and described in recital (199), were by 14 to 25 % lower than AN spot prices in France ⁽⁹⁹⁾, as provided by these interested parties during the period considered. Fourth, as exemplified in recital (244), after adjusting AN spot prices in the Black Sea, Baltic and Brazil regions to the EU CIF border ⁽¹⁰⁰⁾, the actual AN prices in the Union were at the same level in 2016 – 2017 and higher by mere 9 to 15 EUR/tonne in 2018 and the RIP. Therefore, such difference of actual AN price in the Union versus the other markets could not be considered as permanent and/or substantial.
- (323) As to the above 8 % profitability of the Union industry being an evidence of a premium being charged, the Commission notes that the target profit is not a profit above which a price premium occurs, a high return on investment is not a proof of the price premium. Furthermore, the profitability of the sampled Russian exporting producers is far above the profitability of the Union industry. By the logic of this argument, it would actually be the Russian exporting producers charging a significant price premium on their domestic as well export markets rather than the Union industry. With regards to capacity utilisation, as recognised in the previous investigations on ammonium nitrate, a low capacity utilisation rate for the product concerned is a less meaningful indicator of the overall economic situation of the industry. This is because liquid ammonium nitrate (an intermediate product) can

⁽⁹⁸⁾ Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinomyssky Azot', Joint Stock Company 'Azot'), Uralchem JSC and Acron group.

⁽⁹⁹⁾ Compared after adjustment of provided AN spot prices to ex-works price level.

⁽¹⁰⁰⁾ Using, as example, the delivery cost of one of the sampled Russian producers provided in the submission of these parties, comments on General disclosure document by Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinomyssky Azot', Joint Stock Company 'Azot') and Uralchem JSC, t20.006223

be used to produce the solid ammonium nitrate, but also other downstream products. Consequently, statistical distortions can occur due to the existence of multi-purpose plants that can switch production to or from other fertilisers. Based on this, the claim of the parties was dismissed.

- (324) Several interested parties ⁽¹⁰¹⁾ claimed that the Commission was inconsistent when it alleged that competitive interactions in the third countries would not be relevant for determining whether injury is likely to recur, since, the Russian export prices to third countries were considered to be appropriate to establish the likelihood of recurrence of dumping and to establish the likely price levels of imports from Russia in the absence of anti-dumping measures. Furthermore, the interested parties argued that the data on exports used by the Commission was not supported by Eurostat figures for CN310230 90 and 310240 90. They argued that China was not an export destination for the AN of the Union producers and that the free on board (FOB) delivery export sales prices were below the average ex-works sales price in the Union.
- (325) In relation to the recurrence of injury, the Commission's investigation relates to the situation in the Union market. The Union industry operates mostly in its local market, which is its core business. The fact that Russian exporting producers and the Union industry may compete in other third country markets with different market characteristics does not directly relate to that analysis. Especially, as recognised in recital (174), the Union market is a shrinking market in terms of AN consumption, which may not be the case, indeed as claimed by the exporting producers, of the other markets. On the contrary, the likelihood of recurrence of dumping analysis involves analysis of such factors as the exporting producers behaviour and pricing in third country and its incentives to redirect exports to the Union.
- (326) Furthermore, even if some interaction between the Union industry and the exporting producers in third markets occurs, it cannot be seen as an evidence of the capacity of the Union industry to compete with the Russian exporting producers in third markets, and much less in the Union market. First, the Union industry and the Russian exporting producers are focused on different export markets. The Union industry exports to China, Ukraine, Brazil, Serbia and Australia, as the main destinations. As mentioned in recital (120), Ukraine and Australia are de facto closed for the Russian exports. The only real interaction with the sales on the Union industry occurs in Brazil. However, even there, according to export statistics ⁽¹⁰²⁾, the volume of exports of the Union industry represents only around 4 % of the volume of exports of the Russian exporting producers. More importantly, it is clear that Union industry would not be able to withstand unfair competition from Russian exporting producers in the Union market, since, as concluded in the recital (169), it is likely that Russian AN producers would export large quantities of AN to the Union at dumped prices, in the absence of the EU measures.
- (327) With regard to the allegation of the interested parties that the Eurostat data does not confirm Commission's findings with regards to the destinations and the prices, the Commission noted that the interested parties considered only two of the CN codes related to the product under review. Therefore, they looked only at a snapshot of the relevant Union exports. Furthermore, CIF price delivery level to the export destination and not FOB price delivery level is the right basis to compare the export prices to the Union ex-works prices because the prices should be compared at the same point of delivery.
- (328) Finally, Russian exporting producers were highly profitable (profitability ranging from 24 % to 50 %) with their average sales prices of 133 EUR/tonne to third markets in the RIP. Even with the transport and insurance costs to the Union ⁽¹⁰³⁾, the average CIF Union frontier price of Russian exporting producers would be below the break-even price ⁽¹⁰⁴⁾ of the Union industry. As a result, the Russian exporting producers would be profitable in the Union market, while the Union industry would merely be covering their costs. These claims were therefore rejected.

⁽¹⁰¹⁾ Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot') and Uralchem JSC.

⁽¹⁰²⁾ The analysis is based on Eurostat (CN8 digit level) and UNICOM trade (CN6 digit level) statistics, which include other products than the product under review.

⁽¹⁰³⁾ Cost in a range of 40 – 50 EUR/tonne, as reported by the interest parties making this claim.

⁽¹⁰⁴⁾ Break-even price is the price that would cover the cost of production, i.e. 198 EUR/tonne established in the RIP.

- (329) Some interested parties claimed that the Russian imports were not likely to have an injurious impact on Union producers because:
- (i) there was no evidence that Russian imports would 'rapidly gain market shares' in the Union market should the antidumping measures be lifted. On the contrary, the Union industry had demonstrated its ability to increase its presence in the third country markets, despite the parallel presence of Russian imports in these markets;
 - (ii) Russian imports may have increased their market share up to 6 % of the Union consumption, which was not enough to cause 'an immediate drop in its sales volumes, market share and an increase in its fix costs per unit, which will negatively affect the profitability';
 - (iii) any lost market share in the domestic Union market would be compensated by higher export sales to the third country markets, meaning that fix costs per unit of the Union producers would remain stable;
 - (iv) any potential difficulty experienced by the Union industry as a result of the shrinking market would not qualify as the injury caused by Russian imports;
 - (v) additional disclosures would be required to properly understand the calculations made in the simulation of profit/loss of the Union industry to match alleged Russian import prices absent anti-dumping measures, the latter is clearly based on an inaccurate methodology.
- (330) First, as mentioned in recitals (325) and (326), the export performance of the Union industry cannot be used as an indication of Union industry's ability to compete with the Russian exporting producers. Meanwhile, as explained in recitals (296) and (297) as well as recitals (340) and (341) the Union market is attractive to Russian exporting producers from the price and proximity point of view.
- (331) Second, an increase in the volumes of the Russian imports at the price levels estimated in the investigation would be sufficient to cause an immediate drop in its sales volumes, market share and an increase in its fix costs per unit of the Union industry, with a following negative effect on the profitability, as demonstrated in the recital (302).
- (332) Third, in relation to the recurrence of injury, the investigation concerns the situation in the Union market. The Commission does not see why injury caused to the industry in the Union market should be mitigated by alleged gains somewhere else. The fact that there are third country markets to which the Union industry may (re)direct its sales does not directly relate to the recurrence of injury analysis.
- (333) Fourth, the Commission has not found material injury to the Union industry.
- (334) Fifth, a simulation described in the recital (302) was placed on the file of the case accessible to all interested parties ⁽¹⁰⁵⁾. The data of the sampled Union producers in this simulation was indicated in ranges in order not to disclose sample specific information, which was considered confidential (it may have revealed sample specific information among the sampled Union producers and could have served as a commercial advantage for them or other interested parties). The values being in ranges do not render the simulation placed on file meaningless nor deprives the exporting producers of their right of defence as both values from the bottom to the top of the ranges used prove the point that the Union industry would be heavily loss making at the price level used. Further, the simulation assumed that the average sales price of the Union industry would be pushed down to the level of the Russian import price observed in the third countries. Then, other parameters of the simulation, namely, sales volume and cost of the sampled Union producers, were based on verified data of the sampled Union producers. It is noted that the simulation considered the Union producers' cost for the volume sold in the Union, instead of the cost for the volume produced. The claims were therefore rejected.
- (335) The same interested parties claimed that the Commission erroneously assessed the potential impact of Russian imports on the situation of the Union industry. Notably, it omitted the favourable market conditions in which Union producers will operate for the next five years due to the declining gas costs in the Union. They claimed that a

⁽¹⁰⁵⁾ File t20.005622.

forward-looking analysis of the likelihood of injury should consider such lower costs and their impact on the ability of Union producers to effectively compete with Russian producers in the absence of antidumping measures.

- (336) Based on the gas price forecast issued by the World Bank ⁽¹⁰⁶⁾, gas price in Europe will reach the level observed in 2016, the start of the period considered, in 2023. The cost of production of the Union producers should follow the same trend, as these are linked (recital (200)). With these assumptions, the cost of the Union producers would then be around 174 EUR/t, as in 2016. Assuming that the Russian export prices to third country remained at the same level as in the RIP (since the Russian regulated gas price remains stable ⁽¹⁰⁷⁾), these prices would still be below the cost of production of the Union producers (i.e. below 174 EUR/t). Based on this, it is likely that Russian exports to the Union would still exert a strong price pressure to the Union industry. The claim of the parties was therefore rejected.
- (337) The same interested parties claimed that removing the anti-dumping measures would not deprive the Union industry from all protection, as they would continue to benefit from the MFN ⁽¹⁰⁸⁾ customs duty.
- (338) The aim of the anti-dumping measure is to re-establish fair competition in the Union market. Existing conventional customs duties do not serve this purpose and therefore cannot be the reason why anti-dumping measures would not be maintained/imposed on unfairly priced imports. The claim of the parties is rejected.
- (339) Same interested parties claimed that the attractiveness of the Union market was overestimated:
- (i) the Russian exporting producers would export to the Union at the same price at which they exported to other third countries, as also allegedly recognized by the Commission;
 - (ii) based on one of the sampled exporting producers in Russia, the cost of transportation to the third country markets (like Brazil, United States and Central America) was almost the same as the cost of transportation to the Union.
- (340) First, in order to consider a likely AN price level of the Russian exporting producers to the Union without the measures, the Commission estimated the potential undercutting level in the absence of measures using the cooperating exporting producers' actual prices to third countries (recital (294)). The conclusion that Russian exporting producers were likely to re-direct their exports to the Union market was because the prevailing AN prices in the Union were higher than the Russian export prices in the third country markets, creating an economic incentive. This investigation established that the ex-works price in the Union was around 219 EUR/tonne (recital (200)), which was significantly higher than average ex-works export price of 133 EUR/tonne of the three sampled exporting producers to third countries (recital (81)). Based on this, Russian exporting producers have an economic incentive to sell to the Union instead of third markets. In particular, considering the fact that, as based on the questionnaire replies of the sampled Russian exporting producers, they already cover the cost of sales to the Union and achieve profits when selling under the existing anti-dumping measures. This implies that when selling at even higher price to the Union, they would achieve even higher profits.
- (341) Second, as noted in the recital (307), based on the transport cost of all the cooperating exporting producers, this investigation found that the transport cost to third countries were nearly 30 % higher than to the Union. This claim pertaining to one Russian exporting producer was therefore dismissed.
- (342) One Russian exporting producer claimed that the Commission was self-contradictory and the causal link analysis lacked of reasoning. On the one hand, the Commission concluded that no causality analysis was needed and, on the other hand, it concluded that injury was caused by Russian imports.

⁽¹⁰⁶⁾ Source: World Bank Commodities Price Forecast, Natural gas price, Europe in 2016 and 2023 is 4,6 \$/mmbtu.

⁽¹⁰⁷⁾ Comments on General disclosure document by Russian Fertilizer Producers' Association, EuroChem group (Joint Stock Company 'Nevinnomyssky Azot', Joint Stock Company 'Azot') and Uralchem JSC, t20.006223.

⁽¹⁰⁸⁾ Most Favoured Nation.

- (343) This claim was based on the misunderstanding of the assessment conducted by the Commission in this case. As stated in recital (216), the Commission concluded that the Union industry was not materially injured. Thus, an analysis of the causal link was not warranted and therefore not conducted. However, in its subsequent analysis of the likelihood of recurrence of injury, the Commission concluded that it was likely that material injury would recur should the existing anti-dumping measures against imports from Russia were allowed to lapse. The claim was therefore dismissed.
- (344) The same Russian exporting producer argued that third countries were attractive to them and that the demand in those markets was growing. The exporting producer explained how the domestic and Ukrainian markets (which according to the exporting producer amounted for 7 % of the global AN consumption) used up all of its capacity during the relevant season for sales in the Union. Furthermore, it explained how it built up its export capacity to regions other than the Union. Other interested parties claimed that the Union market was only one of many markets to which Russian exporting producers could export. They did not have any specific incentive to redirect exports to the Union and breach existing long-term contracts if the anti-dumping measures were terminated;
- (345) The Commission noted that it did not deny that third country markets may be attractive to the Russian exporting producers when compared with the Union market with anti-dumping measures on imports from Russia in place. However, should these measures be allowed to lapse, as explained in recitals (296) and (297) as well as recitals (340) and (341) the Union market would be attractive to Russian exporting producers from the price and proximity point of view. The prices on the Union market are much higher and therefore more profitable than those on the domestic and other third markets. The contractual engagements of the economic operators may be renegotiable following the gains. Furthermore, as explained in recital (143), the Ukrainian market remains closed to the Russian AN exports. Finally with regards, to the build up of the capacity in third country markets whilst Union remains under anti-dumping measures, it merely proves that exports are important to the Russian exporting producers. It does not contradict the fact that, as stated in recital (340), the prices in the Union are much more attractive than in those markets and, as stated in recital (341), that cost of transport to the Union are lower than to those other destinations. This claim was therefore rejected.

6. UNION INTEREST

- (346) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against Russia would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.
- (347) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (348) On this basis, the Commission examined whether, despite the conclusions on the likelihood of a continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures. It is recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union.

6.1. Interest of the Union industry

- (349) As explained in recital (213), the measures enabled the Union industry to maintain its positive micro economic situation. At the same time, it was also concluded in recitals (298) to (303), that the Union industry would be likely to experience a deterioration of its situation in case the anti-dumping measures against Russia were allowed to lapse. Indeed, the investigation showed that the continuation of the measures would most likely ensure the current state economic situation of the Union industry. The Union industry would be able to make and continue the on-going investments, in particular those related to the health, safety and environmental standards of the EU.

(350) The termination of measures would undoubtedly lead to a quick deterioration of their economic situation. Considering the fact that AN is not the sole product in the nitrogen fertilizer portfolio but it is the component of the general integrated production profile, a recurrent injury to AN production would immediately impact all upstream (ammonia, nitric acid), downstream (UAN) and related (CAN, A5, urea) production lines. Therefore, AN business would have a direct negative impact on the whole nitrogen fertilizer business.

(351) Therefore, the continuation of the measures against Russia would benefit the Union industry.

6.2. Interest of importers/traders

(352) As mentioned in recital (41), no importers cooperated or made themselves known in the current investigation. Therefore, there were no indications that the conclusions reached in the last expiry review investigation ⁽¹⁰⁹⁾ are no longer valid and that the maintenance of the measures would have a negative impact on the importers outweighing the positive impact of the measures.

6.3. Interest of users

6.3.1. General remarks

(353) As mentioned in recital (49), two users (farmers) replied to the questionnaire. Several users' (farmers) association came forward expressing their opposition to the continuation of the measures on the grounds that these create 'market premium' for AN (and CAN) traded in the Union as compared to other markets and there was an urgent need to alleviate the cost burden on farmers. Their claim assumed that the 'market premium' created by the anti-dumping and customs duties was transferred at 100 % to the price of fertilizer.

(354) The analysis of the interest of users was based on the data of the European Commission, Directorate-General for Agriculture ('DG AGRI') and two questionnaires of the French farmers (whose data is sensitive and therefore, when used in the analysis below, is provided in ranges).

(355) The analysis of the Union interest covers essentially two aspects: (i) AN cost in the cost of farm, (ii) effect of the measures on the costs of farm in the period considered.

6.3.2. The representativeness of AN cost in the farmers' costs

(356) Users' associations claimed that: (i) the impact of trade barriers on farm economy should be assessed on arable crop farms, more specifically, cereal, oilseed and protein crop specialised farms ('COP farms') and not on the agricultural sector as a whole; (ii) COP farms are the most fertilizer intensive and therefore they are actual users of AN; (iii) they are also the biggest users of nitrogen fertilizers in the Union ⁽¹¹⁰⁾. These farms represent around 35 % of all farms in the Union ⁽¹¹¹⁾.

6.3.2.1. AN cost in the cost of COP farms

(357) The impact of fertilisers as a whole, and of AN, in particular, on the farmers' costs has been assessed based on data provided by the two French farmers that replied to the questionnaire. This analysis showed that the fertilizers (as a whole) used in these French farms represented around [36 – 45 %] of the specific crop cost ⁽¹¹²⁾ and around [16 – 21 %] of total farm cost ⁽¹¹³⁾ in the last financial year available ⁽¹¹⁴⁾. Considering that AN cost constituted around

⁽¹⁰⁹⁾ Implementing Regulation (EU) No 999/2014).

⁽¹¹⁰⁾ Source: Hearing with users' associations, t19.005682, 8/11/2019.

⁽¹¹¹⁾ Source: Farm Accountancy Data Network (FADN), Farm Economy Focus by sector, DG AGRI, <https://agridata.ec.europa.eu/t20.004226/t20.004250>.

⁽¹¹²⁾ Specific crop cost consists of costs for fertilizers (including AN), seeds, pesticides and feed (also 'cost of raw materials').

⁽¹¹³⁾ Total farm cost/total inputs consists of specific crop cost (cost of raw materials), labour cost, overheads (incl. depreciation).

⁽¹¹⁴⁾ Last financial year – 2018. Source: questionnaire reply of the two farmers.

[39-44 %] of all fertilizers cost used in these French farms ⁽¹¹⁵⁾, AN cost represented around [15-20 %] of the specific crop cost and up to [3-5 %] of total farm cost in the same period.

- (358) This information was crosschecked with the farm economy data for COP farms in France sourced from DG AGRI. Indeed, it confirmed that fertilizers (as a whole) used for these specialised COP farms in France represented around 42 % of the specific crop cost and around 14 % of total farm cost in the last financial year available ⁽¹¹⁶⁾. That said, assuming that AN cost constituted around [39-44 %] of all fertilizers cost used, AN cost therefore could have represented maximum 17 % of the specific crop cost and maximum 5,8 % of total farm cost in the same period in France.
- (359) For the whole EU, based on the data sourced from DG AGRI, fertilizers used for these specialised COP farms in the EU represented around 43 % of the specific crop cost and around 13 % of total farm cost in the last financial year available ⁽¹¹⁷⁾. Again, assuming that AN cost constituted around [39-44 %] of all fertilizers cost used, AN cost therefore could have represented maximum 18 % of the specific crop cost and maximum 5,6 % of total COP farm cost in the EU during the same period. This would have been the proportion of AN cost in the total farm cost had the EU COP farms be as AN intensive as COP farms in France, which they were not, as confirmed by the users' associations ⁽¹¹⁸⁾.
- (360) Overall, it is important to note that fertilizers cost as a share of farms cost in the EU COP farms was constantly decreasing over time, e.g. when analysing the latest period from 2014 to 2018, in 2014 fertilizers represented 15 % of total crop farms cost, while in 2018 they decreased to 13 %. This demonstrate that the other cost elements (like seeds or wages, rent, interest paid ⁽¹¹⁹⁾) were more burdensome for the EU COP farmers, which were the most intensive users of AN.

6.3.2.2. AN cost in the cost of all crop farms

- (361) The amount of AN used as a fertilizer depends on the type of crop farms grow, be it cereal (wheat, barley, oats, rye, triticale), oilseed rape, potatoes, sugar beet, or grassland. Many farms in the Union rely on several crops and the costs of AN for farmers varies from country to country. It is therefore difficult to assess a precise cost of AN for all farms. Nonetheless, a trend of decreasing share of fertilizers' cost in terms of value of output of the agricultural industry was observed throughout the whole agricultural sector in the Union ⁽¹²⁰⁾.
- (362) Furthermore, based on the data sourced from DG AGRI, the Commission estimated that fertilizers used for all crop farms in the EU represented around 30 % of the specific crop cost and around 9 % of total crop farm cost in the last financial year available ⁽¹²¹⁾.
- (363) That said, assuming as explained in recital (357) that AN cost constituted around [39-44 %] of all fertilizers cost used, the AN cost could have represented maximum 3,7 % of total farm cost for all crop farms in the EU. Again, this would have been the proportion of AN cost in the total farm cost had all the EU crop farms be as AN intensive as specialised COP farms in France, which they were not, as confirmed by the users' associations ⁽¹²²⁾.
- (364) Based on the above, the Commission concluded that the cost of AN in the cost of specialised COP farms and all Union crop farms as a whole was below 5,6 % and 3,7 % respectively. Therefore, the AN cost share in the total cost can be materially significant only if there was a clear link between the price of AN and net margin of the farm, which is analysed further.

⁽¹¹⁵⁾ According to the data submitted by the cooperating COP farmers in their replies to the anti-dumping questionnaires.

⁽¹¹⁶⁾ Last financial year – 2018.

⁽¹¹⁷⁾ Last financial year – 2018.

⁽¹¹⁸⁾ Source: submission of users' associations, t19.005682.

⁽¹¹⁹⁾ Seeds' cost share increased from 7,1 % to 7,5 % from 2014 to 2018; wages, rent, interest paid share increased from 17,7 % to 19,2 % during the same period in the EU COP farms.

⁽¹²⁰⁾ Economic accounts of agriculture, t20.004550.

⁽¹²¹⁾ Last financial year – 2018.

⁽¹²²⁾ Source: submission of users' associations, t19.005682.

6.3.3. *Effect of the anti-dumping duty on the cost of farmers*

- (365) In the current investigation, the users' associations ⁽¹²³⁾ argued the 'effect of AD [anti-dumping] duty on domestic AN prices is evidenced by experience'. However, the extent by which duties were passed to farmers was not uniform and depended on a number of variables, in particular the actual level competition between the various sources ⁽¹²⁴⁾. By way of illustration, the information submitted by the cooperating users' associations could not demonstrate that the decreased anti-dumping duty (as also established in the last interim review ⁽¹²⁵⁾) had an effect on the price of AN. This was because the farmers typically buy from distributors who may or may not pass on any of the benefits. Therefore, if the measures were allowed to lapse, there is no demonstrated evidence that the users would benefit from lower AN prices.
- (366) Based on the research of DG AGRI, farm incomes depend on variety of factors and can vary substantially over time. Cyclicity and uncertainties are inherent to farming and their margins. For example, COP farms faced the highest income variability year after year over the period 2007-2015; this sector suffered most from the financial crisis in 2009, when almost two out of three COP farmers (63 %) experienced an income loss above 30 % ⁽¹²⁶⁾. Same source stated that a high share of farmers with strong income drops did not necessarily mean that the level of income reached was particularly low. The farm economy data ⁽¹²⁷⁾ indicate an increase in French COP farm net income from 2016 to 2018, while the two French farmers that replied to the questionnaire reported losses in the last financial year ⁽¹²⁸⁾. The same farm economy data indicate an increased in the Union COP farm net income and all farms net income from 2016 to 2018 by 67 % and 34 % respectively, thus contradicting at least for 2018 the data provided by the users' associations.
- (367) This investigation showed that there was no relation between the price of AN and the net margin of crop farms ⁽¹²⁹⁾ (i.e. an increase in farmers' income could not be linked to a decrease in AN prices or vice versa).
- (368) The anti-dumping measures on imports of the product under review have been in force for many years without disproportionate costs to the farmers, which could have jeopardised their income and, consequently, their existence. Indeed, as explained in recital (365), there was an obvious lack of benefit transfer to the farmers observed after lowering of the anti-dumping measures following the last interim review. In any case, the need of the multiple and close-by sources of supply and, therefore, the viability of the Union fertilizers industry would be in their interests.
- (369) On this basis, the Commission found that the continuation of measures would not have a significant negative impact on users and that there were therefore no compelling reasons to conclude that overall it was not in the Union interest to extend the existing measures.

6.4. **Submissions of the interested parties**

- (370) Users associations ⁽¹³⁰⁾ claimed that the EU Trade policy was not coherent: Union farmers have to buy their major input, fertilizers, on a protected domestic market with a significant 'market premium', while they sell grain on an open market, where prices have been in parallel with the global price for the last 20 years.
- (371) The Commission noted that the aim of the anti-dumping measure is to re-establish fair competition in the Union market. In any event, the Commission considers the effect of the measures on farmers in the context of the Union interest test. Thus, there is no contradiction in the policies applied by the Commission. This claim was therefore dismissed.

⁽¹²³⁾ AGPB, IFA.

⁽¹²⁴⁾ Source: Hearing with users' associations, t19.005799, 15/11/2019.

⁽¹²⁵⁾ Source: Hearing with users' associations, t19.005682, 15/11/2019. It is noted that the forward estimations relate to 2018 and 2019, i.e. now the past. The associations did not provide any actual figures for these two years.

⁽¹²⁶⁾ Source: Agricultural and farm income, DG Agriculture and Rural Development, Unit Farm Economics, t20.003213

⁽¹²⁷⁾ Source: Farm Economy Focus by sector, DG AGRI, <https://agridata.ec.europa.eu/>; t20.004226.

⁽¹²⁸⁾ Last financial year – 2018. Source: questionnaire reply of the two farmers.

⁽¹²⁹⁾ Based on comparison of Union industry's price of AN on the Union market (source: verified questionnaire replies of the sampled producers) and income level of all crop farms in the EU, also specialised COP farms in the EU and France (source: DG AGRI).

⁽¹³⁰⁾ AGPB, IFA.

- (372) A cooperating exporting producer claimed that the high cost of the fertilizers can lead to the erosion of farmers' income.
- (373) The Commission noted that the analysis of the cost of farms described in recitals (357) to (364) showed that the share of the cost of AN could not be considered as detrimental to farms income and their competitiveness in a global market. Furthermore, as stated in recital (367), this investigation showed that there was no relation between the price of AN and the net margin of crop farms (i.e. an increase in farmers' income could not be linked to a decrease in AN prices or vice versa). This claim was therefore rejected.
- (374) The same cooperating exporting producer claimed that the Union farmers face increased competition on global markets. The EU agricultural commodities producers faced increasing competition from foreign exports. In parallel to the surge in imports, EU agricultural products have been losing market shares on export markets.
- (375) According the estimates of DG AGRI, the EU market for cereals was expected to grow ⁽¹³¹⁾, with further shifts between products and increasing demand for feed and industrial uses. Total EU cereal production could reach 319 million tonnes by 2030. More competition from other main producing regions, such as the Black Sea, will likely translate in a moderate increase of EU exports. World wheat trade is expected to continue to grow as global demand strengthens. The EU, thanks to high land productivity and close location to major importing markets, is expected to remain the third main exporting region (representing 14 % of the market shares in global wheat trade by 2030).
- (376) Users' associations ⁽¹³²⁾ claimed that there was an urgent need to alleviate the cost burden on farmers. A number of factors affected farmers' profitability. High AN costs would necessarily have an impact on the cost structure of farmers and was one of the key elements to consider when determining how the profitability of farmers might be enhanced. The higher the costs of farmers, the less they would be competitive against imports and on export markets. The Irish farmers association further submitted that the Irish farm family income ⁽¹³³⁾ situation was aggravated by rising costs.
- (377) The investigation demonstrated that AN constitutes approximately 17 % of the total Union consumption of all nitrogen-containing fertilisers (ammonium nitrate, calcium ammonium nitrate, urea, urea AN solution, NPK/NP/NK, etc.) ⁽¹³⁴⁾. More importantly, AN is used in combination with the other nitrogen fertilizers (like urea). AN is considered a premium product due to the higher yields in comparison to the other nitrogen fertilizers and is therefore more expensive.
- (378) Furthermore, the amount of AN used depends on the grown cereal (wheat, barley, oats, rye, triticale), oilseed rape, potatoes, sugar beet, or grassland. Many farms in the Union rely on several crops. Moreover, the costs of AN for farmers also varies from country to country. As demonstrated by the analysis in recitals (357) to (367), the share of the cost of AN cannot be considered as detrimental to farms' income and competitiveness in a global market. More importantly, as detailed in recital (365), there was an obvious lack of benefit transfer to the farmers observed after lowering of the anti-dumping measures following the last interim review. This claim was therefore rejected.
- (379) Users associations ⁽¹³⁵⁾ also argued that the market premium for AN, 'a distortion resulting from the market protection caused by the combined application of a MFN duty rate of 6,5 % and anti-dumping measures on Russian AN', directly translated into extra cost for farmers. Over 5 years (the proposed period of possible extension of the anti-dumping measures), this would represent a total cost of 2,5 – 3,5 billion EUR for farmers in the Union (equally shared between AN and CAN purchases).

⁽¹³¹⁾ Source: EU agricultural outlook for markets and income 2019 – 2030, DG AGRI, European Commission.

⁽¹³²⁾ AGPB, IFA.

⁽¹³³⁾ Farm Family Income (FFI) is the income after the deduction of the costs of hired labour, interest paid and rent paid and is the return to the farmer for the use of his own labour, own land and own capital.

⁽¹³⁴⁾ Source: Hearing with FE, t19.005516, 24/10/2019.

⁽¹³⁵⁾ AGPB, IFA.

- (380) First, the calculations of market premium were found erroneous, as described under recital (235). Second, the measures in place do not prevent Russian companies from exporting AN to the Union at a fair price. Third, likewise the measures in place do not prevent Russian (or other third countries) companies to produce and export CAN to the Union market. Fourth, as mentioned in recital (365), there was no substantial evidence demonstrating that anti-dumping duty on AN was transferred at 100 % to the price of AN fertilizer and that the farmers could benefit. Based on this, the Commission concluded that the claimed cost of the anti-dumping duties for farmers was unfounded.
- (381) Users associations ⁽¹³⁶⁾ also claimed that a short few-year period was not relevant for any economic assessment in agriculture as there was a high annual volatility of the main income drivers, namely prices and variable costs.
- (382) This investigation demonstrated that shorter or longer period indicated similar, decreasing share of fertilizers cost in the specific crop cost and total farm cost in both, French and the EU specialised COP farms. Therefore, for the sake of evaluating the share of AN in the farm cost, the length of the period was not particularly relevant.
- (383) Users associations further claimed that a long-term analysis demonstrates that there was downward trend in family farm income, regardless of possible fluctuations.
- (384) As detailed in recital (366), based on the research of DG AGRI, farm incomes depend on variety of factors and can vary substantially over time, e.g. COP farms faced the highest income variability year after year over the period 2007-2015; this sector suffered most from the financial crisis in 2009, when almost two out of three COP farmers (63 %) experienced an income loss above 30 % ⁽¹³⁷⁾. The same source found that a high share of farmers with strong income drops did not necessarily mean that the level of income reached was particularly low. However, as explained in recital (367), in this investigation, a decrease in farmers' income could not be linked to an increase in AN prices. The claim of the party was therefore dismissed.
- (385) Following the disclosure, users associations ⁽¹³⁸⁾ claimed that, first, the Commission disregarded the evidence submitted by farmers on the effect of antidumping duties on farmers' profitability and competitiveness, in particular as compared to other sectors of the economy. Second, they recalled that the two farmers that replied to the questionnaire were making losses, which was ignored by the Commission, as well as the testimonials of the farmers that were provided at the hearings with the Commission. Third, that it was not relevant whether there was a clear link between the price of AN and net margin of the farm, since AN prices were not the sole factor affecting farmers' profitability, but the excessive AN prices were driving down farmers' profitability. Therefore, given the low level of farmers' profitability, it was necessary to alleviate their cost burden by terminating the anti-dumping measures on AN from Russia. Fourth, the 'market premium' was enough to show that duties were eventually passed to farmers.
- (386) The aim of the anti-dumping measure is re-establish fair competition in the Union market. That said, the effect of the measures on farmers and their interest was considered under the Union interest test, which does not constitute putting in contrast the profitability and competitiveness of the farmers versus the other sectors, but assessing whether other interested parties in the Union would be disproportionately affected by measures.
- (387) In this context, the data provided by the two farmers that replied to the questionnaire was extensively used in this analysis as described in the recitals (357) to (364) and therefore their profit margins not ignored by the Commission. The testimonials of the farmers were also taken into account as the context in which all the factual evidence on file was assessed. Furthermore, the analysis of the effect of the measures is not limited geographically to areas where AN is used more intensively than other nitrogen fertilizers and, as demonstrated in this investigation, the cost of AN in all Union crop farms, as a whole, was below 3,7 % of their total cost.

⁽¹³⁶⁾ AGPB, IFA.

⁽¹³⁷⁾ Source: Agricultural and farm income, DG Agriculture and Rural Development, Unit Farm Economics, t20.003213

⁽¹³⁸⁾ AGPB, IFA.

- (388) When analysing the drivers of farmers cost affecting the profitability, as detailed in the recital (360), fertilizers cost as a share of farms cost in the EU COP farms was constantly decreasing over time, which demonstrated that the other cost elements, like seeds or wages, rent, interest paid, were more burdensome for the EU COP farmers (which were the most intensive users of AN). This suggests that costs other than nitrogen fertilizers represent the real cost burden for the farmers.
- (389) Regarding the 'market premium' (the difference of the AN price in the Union versus the AN price Black Sea region, delivered to the EU), which allegedly was enough to show that duties were passed to farmers, as analysed in the recital (244), the comparative increase of AN price in the Union in RIP (only) was not permanent, nor substantial during the whole period considered. In any case, no evidence on how such comparative increase could demonstrate that the duties were passed to the farmers was provided. The claims of the parties was therefore rejected.
- (390) The same users' associations claimed that they had shown that removing or increasing anti-dumping duties on AN had an effect on prices ⁽¹³⁹⁾. They stated that this evidence was disregarded without any valid reason.
- (391) The evidence presented indicated the relation between the decrease in anti-dumping duty (following the last interim review) and the alleged price premium calculated by these parties. The calculation of the premium was addressed in recitals (240) to (245) and was dismissed as inaccurate. The effect on AN prices was not demonstrated in the submission, as claimed, which only mentioned that the price transmission was not perfect.
- (392) The same users' associations claimed that the Commission should have considered the cumulative effects of the anti-dumping measures in order to assess the Union interest.
- (393) According to the case law referred to by the users' association, when looking at cumulative impact of measures the Commission should consider various ways in which continuation or laps of measures could affect the users in the economic context prevailing at the time of the investigation. The Commission did that and reached the conclusion that continuation of the measures would not be against the interest of the Union. This claim was therefore rejected.
- (394) One Russian exporting producer claimed that the conclusions in the recital (350) regarding the fact that a recurrent injury to AN production would immediately impact all upstream (ammonia, nitric acid), downstream (UAN) and related (CAN, A5, urea) production lines are misplaced, since the investigation concerns only AN and warrants analysis for AN solely. The Commission's findings, which go beyond consequences for the AN market were a mere speculation, were not supported by facts and have not been part of the analysis.
- (395) The Commission noted the parties did not challenge the finding in recital (350) that a recurrent injury to AN production would immediately impact all upstream (ammonia, nitric acid), downstream (UAN) and related (CAN, A5, urea) production lines. As this is part of a prospective analysis it is by definition speculative but based on the fact that these production lines are integrated and the production itself has high fixed costs. None of these findings were challenged by the exporting producer. The claim of was therefore dismissed.
- (396) The same Russian exporting producer claimed that, following a decrease of the anti-dumping duties in 2018, no benefit was passed on to farmers due to the fact that the antidumping duty on Russian imports was still prohibitive and a decrease in 2018 did not allow Russian producers to import any additional volumes in the Union. Therefore it could not exert a positive effect on competition in the Union market.
- (397) The claim of the party did not, however, provided any additional evidence that there would be a benefit passed to the farmers if the anti-dumping duties were terminated. As stated in recital (367) the fact remains that throughout this and previous investigations an increase in farmers' income could not be linked to a decrease in AN prices. The claim was therefore dismissed.

⁽¹³⁹⁾ Submission of AGPB, IFA. t19.005828.

- (398) The same Russian exporting producer claimed that if the anti-dumping measures were terminated, farmers in the Union would continue purchasing from the Union producers. This was because they need a sable supply, especially in a high season, which Russian producers could not offer due to the overlapping seasons and commitments in their own home and third country markets.
- (399) Contrary to this claim, farmers typically buy from distributors, where the origin of the material may be local or imported. Then, due to the attractiveness of the Union market addressed in the recitals (296) and (297), as well as recitals (340) and (341), the existing commitments of the Russian producers may change following the situation on the Union market.

6.5. Conclusion on Union interest

- (400) In view of the above, the Commission concluded that there were no compelling reasons of Union interest against the extension of the current anti-dumping measures on imports from Russia. On the contrary, there was no significant change in the situation of farmers and the Union industry as compared to previous investigations.

7. ANTI-DUMPING MEASURES

- (401) On 25 September 2020, all interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to maintain the anti-dumping measures in force. They were also granted a period within which they could submit comments subsequent to this disclosure. The submissions and comments were duly taken into consideration.
- (402) The Union producers association, the Russian exporting producers, the Russian producers' association, one user association and the Russian Government submitted comments on disclosure.
- (403) Upon request, hearings were held with FE, RFPA as well as with the sampled exporting producers. The intervention of the Hearing Officer was requested by RFPA as well as by all the sampled exporting producers and the hearings with the Hearing Officer took place on 9 October and 15 October 2020 respectively.
- (404) On 30 September, on 1 October, on 21 October and on 28 October 2020, the Commission provided additional general and/or company-specific disclosure taking into account certain claims received following final disclosure. Interested parties were also granted a period within which they could make representations subsequent to these additional disclosures. RFPA as well as all sampled exporting producers submitted comments on these additional disclosures.
- (405) Following the disclosure, interested parties claimed that the inappropriate disclosures prevented them from meaningfully exercising their rights of defence as they were not in a position to effectively make known their views on the correctness and relevance of the facts and circumstances alleged.
- (406) It is observed that all the essential facts and circumstances underlying the determinations made by the Commission in this Regulation have been disclosed to the interested parties, be it as part of the general or the company-specific disclosures. Furthermore, all requests for additional information by interested parties were adequately addressed, either by providing further clarifications, further access to documents, access to revised non-confidential versions of documents or by detailed explanations substantiating refusal of disclosure requests (see in this context also recitals (87) and (88), (115) to (117) and (284)) for specific arguments and the Commission rebuttals). Therefore, these claims have been rejected.
- (407) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia applicable under Implementing Regulation (EU) 2018/1722 should be maintained.
- (408) Following the disclosure a users' association ⁽¹⁴⁰⁾ proposed that, if the European Commission decided to extend the measures, the measures should be extended for one year only. This proposal was based on low natural gas prices, prevailing in the Union at that time, and low profitability of the farmers.

⁽¹⁴⁰⁾ COPA (Committee of Professional Agricultural Organisations), Cogeca (General Committee for Agricultural Cooperation in the European Union).

- (409) The Commission noted that such a short duration of measures would be exceptional as measures usually cover a 5-year period. There not seem to be any particular situation in the present case justifying a shorter period. With regards to the natural gas prices, aside of them historically being volatile, as stated in recital (336), the World Bank's forecasts predicted that natural gas price in the Union will reach the 2016 level (the beginning of the period considered) in 2023. With regards to the income of the farmers, as stated in Recital (366), farmer's income is shaped by a variety of factors and. The investigation found no clear nexus between ammonium nitrate prices and farmer's income, as explained in recital (367). This claim was therefore rejected.
- (410) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product under review produced by these companies and thus by the specific legal entities mentioned. Imports of the product under review manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'. Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁴¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (411) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹⁴²⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (412) On 13 October 2020 Commission Implementing Regulation (EU) 2020/1317 ⁽¹⁴³⁾ ('new classification Regulation') entered into force. The new classification Regulation has clarified that certain products, predominantly based on ammonium nitrate, fall under CN code 3602 00 00. The Commission has therefore updated the codes in this Regulation, with effect from 13 October 2020, in order to adapt to the correct classification clarified by the aforementioned Regulation. The Commission recalls that, in any event, the list of codes is provided for information only. The scope of the measures is defined by the definition of the product concerned. Its customs classification may change.
- (413) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling under CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 20, ex 3602 00 00 (TARIC codes 3102 29 00 10, 3102 60 00 10, 3102 90 00 10, 3105 10 00 10, 3105 10 00 20, 3105 10 00 30, 3105 10 00 40, 3105 10 00 50, 3105 20 10 30, 3105 20 10 40, 3105 20 10 50, 3105 20 10 60, 3105 51 00 10, 3105 51 00 20, 3105 51 00 30, 3105 51 00 40, 3105 59 00 10, 3105 59 00 20, 3105 59 00 30, 3105 59 00 40, 3105 90 20 30, 3105 90 20 40, 3105 90 20 50, 3105 90 20 60, 3602 00 00 10) and originating in Russia.

⁽¹⁴¹⁾ European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

⁽¹⁴²⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulation (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

⁽¹⁴³⁾ Commission Implementing Regulation (EU) 2020/1317 of 9 September 2020 concerning the classification of certain goods in the Combined Nomenclature (OJ L 309, 23.9.2020, p. 1).

2. The rate of the definitive anti-dumping duty shall be a fixed amount as specified in Articles 2 and 3.

Article 2

For the following goods produced by all companies (TARIC additional codes A522 ⁽¹⁴⁴⁾, A959 ⁽¹⁴⁵⁾ and A999 ⁽¹⁴⁶⁾):

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
Ammonium nitrate other than in aqueous solutions	3102 30 90	—	32,71
Ammonium nitrate other than in aqueous solutions	36 02 00 00	10	32,71
Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90	—	32,71

Article 3

1. For the following goods produced by all companies except for 'KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk' (TARIC additional code A522 ⁽¹⁴⁷⁾ and A999 ⁽¹⁴⁸⁾):

Product description	CN code	TARIC code	Fixed amount of duty (EUR per tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, with no phosphorus and no potassium content	3105 10 00	10	32,71
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P ₂ O ₅ and/or a potassium content evaluated as K ₂ O of less than 3 % by weight	3105 10 00	20	31,73

⁽¹⁴⁴⁾ For goods produced by Open Joint Stock Company (OJSC) Azot, Novomoskovsk, Russia or by Open Joint Stock Company (OJSC) Nevinnomyssky Azot, Nevinnomyssk, Russia.

⁽¹⁴⁵⁾ For goods produced by 'KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo- Chepetsk'.

⁽¹⁴⁶⁾ For all other companies.

⁽¹⁴⁷⁾ For goods produced by Open Joint Stock Company (OJSC) Azot, Novomoskovsk, Russia or by Open Joint Stock Company (OJSC) Nevinnomyssky Azot, Nevinnomyssk, Russia.

⁽¹⁴⁸⁾ For all other companies.

Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and/or a potassium content evaluated as K_2O of 3 % by weight or more but less than 6 % by weight	3105 10 00	30	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and/or a potassium content evaluated as K_2O of 6 % by weight or more but less than 9 % by weight	3105 10 00	40	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and/or a potassium content evaluated as K_2O of 9 % by weight or more but not exceeding 12 % by weight	3105 10 00	50	28,78
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and a potassium content evaluated as K_2O of less than 3 % by weight	3105 20 10	30	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and a potassium content evaluated as K_2O of 3 % by weight or more but less than 6 % by weight	3105 20 10	40	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and a potassium content evaluated as K_2O of 6 % by weight or more but less than 9 % by weight	3105 20 10	50	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 and a potassium content evaluated as K_2O of 9 % by weight or more but not exceeding 12 % by weight	3105 20 10	60	28,78
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of less than 3 % by weight	3105 51 00	10	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 3 % by weight or more but less than 6 % by weight	3105 51 00	20	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 6 % by weight or more but less than 9 % by weight	3105 51 00	30	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 9 % by weight or more but not exceeding 10,40 % by weight	3105 51 00	40	29,31
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of less than 3 % by weight	3105 59 00	10	31,73

Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 3 % by weight or more but less than 6 % by weight	3105 59 00	20	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 6 % by weight or more but less than 9 % by weight	3105 59 00	30	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P_2O_5 of 9 % by weight or more but not exceeding 10,40 % by weight	3105 59 00	40	29,31
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K_2O of less than 3 % by weight	3105 90 20	30	31,73
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K_2O of 3 % by weight or more but less than 6 % by weight	3105 90 20	40	30,75
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K_2O of 6 % by weight or more but less than 9 % by weight	3105 90 20	50	29,76
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K_2O of 9 % by weight or more but not exceeding 12 % by weight	3105 90 20	60	28,78

2. The non-application of any anti-dumping duty for goods listed in paragraph 1 produced by KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk shall be conditional upon presentation by Joint Stock Company United Chemical Company Uralchem to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of ammonium nitrate sold for export to the European Union covered by this invoice was manufactured by (KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk and address) (TARIC additional code A959) in Russia. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to all other companies, mentioned in paragraph 1 shall apply to all product types of ammonium nitrate produced by KCKK Branch of Joint Stock Company United Chemical Company Uralchem in Kirovo-Chepetsk.

Article 4

1. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ⁽¹⁴⁹⁾, the amount of anti-dumping duty laid down in Articles 2 and 3 shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

⁽¹⁴⁹⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

Article 5

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, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2101**of 15 December 2020****renewing the approval of the active substance kieselgur (diatomaceous earth) in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009, of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 20(1) thereof,

Whereas:

- (1) Commission Directive 2008/127/EC ⁽²⁾ included kieselgur (diatomaceous earth) as an active substance in Annex I to Council Directive 91/414/EEC ⁽³⁾.
- (2) Active substances included in Annex I to Directive 91/414/EEC are deemed to have been approved under Regulation (EC) No 1107/2009 and are listed in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽⁴⁾.
- (3) The approval of the active substance kieselgur (diatomaceous earth), as set out in Part A of the Annex to Implementing Regulation (EU) No 540/2011, expires on 31 August 2021.
- (4) An application for the renewal of the approval of the active substance kieselgur (diatomaceous earth) was submitted in accordance with Article 1 of Commission Implementing Regulation (EU) No 844/2012 ⁽⁵⁾ within the time period provided for in that Article.
- (5) The applicant submitted the supplementary dossiers required in accordance with Article 6 of Implementing Regulation (EU) No 844/2012. The application was found to be complete by the rapporteur Member State.
- (6) The rapporteur Member State prepared a renewal assessment report in consultation with the co-rapporteur Member State and submitted it to the European Food Safety Authority ('the Authority') and the Commission on 22 February 2019.
- (7) The Authority made the supplementary summary dossier available to the public. The Authority communicated the draft renewal assessment report to the applicants and to the Member States for comments and launched a public consultation on it. The Authority forwarded the comments received to the Commission.
- (8) On 27 February 2020, the Authority communicated to the Commission its conclusion ⁽⁶⁾ on whether kieselgur (diatomaceous earth) can be expected to meet the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009. The Commission presented an initial renewal report and the draft Regulation for kieselgur (diatomaceous earth) to the Standing Committee on Plants, Animals, Food and Feed on 19 May 2020 and 16 July 2020, respectively.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Directive 2008/127/EC of 18 December 2008 amending Council Directive 91/414/EEC to include several active substances (OJ L 344, 20.12.2008, p. 89).

⁽³⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

⁽⁵⁾ Commission Implementing Regulation (EU) No 844/2012 of 18 September 2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 252, 19.9.2012, p. 26).

⁽⁶⁾ EFSA Journal 2020;18(3):6054, 14 pp. Available online: www.efsa.europa.eu

- (9) As regards the criteria to identify endocrine disrupting properties introduced by Commission Regulation (EU) 2018/605 ⁽⁷⁾, the Authority concluded that kieselgur (diatomaceous earth) does not meet these criteria. Therefore the Commission concludes that kieselgur (diatomaceous earth) is not to be considered as having endocrine disrupting properties.
- (10) The Commission invited the applicant to submit its comments on the conclusion of the Authority and, in accordance with the third paragraph of Article 14(1) of Implementing Regulation (EU) No 844/2012, on the renewal report. The applicant submitted its comments, which have been carefully examined.
- (11) It has been established with respect to one or more representative uses of at least one plant protection product containing the active substance kieselgur (diatomaceous earth) that the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009 are satisfied.
- (12) The risk assessment for the renewal of the approval of the active substance kieselgur (diatomaceous earth) is based on a limited number of representative uses, which however do not restrict the uses for which plant protection products containing kieselgur (diatomaceous earth) may be authorised.
- (13) It is therefore appropriate to renew the approval of kieselgur (diatomaceous earth).
- (14) In accordance with Article 14(1) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions and restrictions.
- (15) Implementing Regulation (EU) No 540/2011 should therefore be amended accordingly.
- (16) Commission Implementing Regulation (EU) 2020/1160 ⁽⁸⁾ extended the approval period of kieselgur (diatomaceous earth) to 31 August 2021 in order to allow the renewal process to be completed before the expiry of the approval period of that active substance. However, given that a decision on renewal of the approval is being taken ahead of the expiry of that extended approval period, this Regulation shall apply from 1 February 2021.
- (17) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Renewal of the approval of the active substance

The approval of the active substance kieselgur (diatomaceous earth) is renewed as set out in Annex I.

Article 2

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 3

Entry into force and date of application

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

It shall apply from 1 February 2021.

⁽⁷⁾ Commission Regulation (EU) 2018/605 of 19 April 2018 amending Annex II to Regulation (EC) No 1107/2009 by setting out scientific criteria for the determination of endocrine disrupting properties (OJ L 101, 20.4.2018, p. 33).

⁽⁸⁾ Commission Implementing Regulation (EU) 2020/1160 of 5 August 2020 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances aluminium ammonium sulphate, aluminium silicate, blood meal, calcium carbonate, carbon dioxide, extract from tea tree, fat distillation residues, fatty acids C7 to C20, garlic extract, gibberellic acid, gibberellins, hydrolysed proteins, iron sulphate, kieselgur (diatomaceous earth), plant oils/rape seed oil, potassium hydrogen carbonate, quartz sand, fish oil, repellents by smell of animal or plant origin/sheep fat, Straight Chain Lepidopteran Pheromones, tebuconazole and urea (OJ L 257, 6.8.2020, p. 29).

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

Done at Brussels, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
Kieselgur (Diatomaceous earth) CAS No 61790-53-2 CIPAC No 647	No IUPAC name exists for kieselgur Other synonyms: Diatomaceous earth Diatomite	1 000 g/kg Minimum content of amorphous silica of 800 g/kg The following impurity must not be exceeded in the technical material: Crystalline silica with particle size <i>below 10 µm – maximum of 1 g/kg</i>	1 February 2021	31 January 2036	For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the renewal report on kieselgur (diatomaceous earth), and in particular Appendices I and II thereto, shall be taken into account. Member States shall pay particular attention to the protection of operators, ensuring that conditions of use include the application of adequate personal protective equipment, in particular respiratory protective equipment, and other risk mitigation measures, where appropriate. Only indoor use is permitted. Member States shall assess any extension of the use pattern beyond use in closed storage environments, in order to establish whether the proposed extensions of use fulfil the requirements of Article 29(1) of Regulation (EC) No 1107/2009 and of the uniform principles laid down in Commission Regulation (EU) No 546/2011 ⁽²⁾ . Conditions of use shall include risk mitigation measures, where appropriate.

⁽¹⁾ Further details on the identity and the specification of the active substance are provided in the renewal report.

⁽²⁾ Commission Regulation (EU) No 546/2011 of 10 June 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards uniform principles for evaluation and authorisation of plant protection products (OJ L 155, 11.6.2011, p. 127).

The Annex to Implementing Regulation (EU) No 540/2011 is amended as follows:

- (1) in Part A, entry 236 on kieselgur (Diatomaceous earth) is deleted;
 (2) in Part B, the following entry is added:

No.	Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
'143	Kieselgur (Diatomaceous earth) CAS No 61790-53-2 CIPAC No 647	No IUPAC name exists for kieselgur Other synonyms: Diatomaceous earth, Diatomite	1 000 g/kg Minimum content of amorphous silica of 800 g/kg The following impurity is of toxicological concern and must not exceed the following level in the technical material: Crystalline silica with particle size below 10 µm – maximum of 1 g/kg	1 February 2021	31 January 2036	For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the renewal report on kieselgur (diatomaceous earth), and in particular Appendices I and II thereto, shall be taken into account. Member States shall pay particular attention to the protection of operators, ensuring that conditions of use include the application of adequate personal protective equipment, in particular respiratory protective equipment, and other risk mitigation measures, where appropriate. Only indoor use is permitted. Member States shall assess any extension of the use pattern beyond use in closed storage environments, in order to establish whether the proposed extensions of use fulfil the requirements of Article 29(1) of Regulation (EC) No 1107/2009 and of the uniform principles laid down in Regulation (EU) No 546/2011. Conditions of use shall include risk mitigation measures, where appropriate.'

⁽¹⁾ Further details on the identity and the specification of the active substance are provided in the renewal report.

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2102**of 15 December 2020**

approving the checks on conformity to marketing standards for fruit and vegetables carried out by the United Kingdom and amending Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular point (f) of Article 91 thereof,

Whereas:

- (1) According to Article 15(1) of Implementing Regulation (EU) No 543/2011 ⁽²⁾, the Commission may, at the request of a third country, approve checks on conformity to marketing standards carried out by that third country prior to import into the Union.
- (2) Following the withdrawal of the United Kingdom from the Union on 1 February 2020 and in view of the end of the transition period provided for in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (Withdrawal Agreement) on 31 December 2020, the United Kingdom sent the Commission a request to approve checks on conformity to specific marketing standards carried out by the United Kingdom prior to import into the Union. In particular, the United Kingdom has undertaken to comply with the requirements set for the marketing of fruit and vegetables after the end of the transition period and has indicated the official authority and the inspection bodies referred to in the second subparagraph of Article 15(2) of Implementing Regulation (EU) No 543/2011.
- (3) The Commission considers that it may grant such an approval because the relevant legislation in the United Kingdom applicable on 1 January 2021 for fruit and vegetables will maintain marketing standards that are equivalent to those applicable in the Union.
- (4) The checks on conformity to marketing standards for fruit and vegetables carried out by the United Kingdom should therefore be approved. In accordance with the second subparagraph of Article 15(2) of Implementing Regulation (EU) No 543/2011, this Regulation should specify the official authority in the third country under the responsibility of which those checks are carried out, as well as the inspection bodies in charge of the proper checks. As a result of this approval, the United Kingdom should be listed in Annex IV to Implementing Regulation (EU) No 543/2011, without prejudice to the application of Union law to and in the United Kingdom in respect of Northern Ireland in accordance with Article 5(4) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement in conjunction with Annex 2 to that Protocol.
- (5) As Implementing Regulation (EU) No 543/2011 applies to and in the United Kingdom in respect of Northern Ireland, checks on conformity to marketing standards carried out by the United Kingdom have to be understood as referring only to Great Britain.
- (6) Implementing Regulation (EU) No 543/2011 should therefore be amended accordingly.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157 15.6.2011, p. 1).

- (7) To ensure legal certainty and in order to guarantee a smooth transition of trade flows in the sectors concerned, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union* and apply from 1 January 2021.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Approval of conformity checks

The checks on conformity to marketing standards for fruit and vegetables carried out by the United Kingdom prior to import into the Union are approved.

Article 2

Official authority and inspection bodies

1. The Secretary of State for the Department for Environment, Food & Rural Affairs is the official authority of the United Kingdom referred to in the second subparagraph of Article 15(2) of Implementing Regulation (EU) No 543/2011 under the responsibility of which the checks referred to in Article 1 of this Regulation are carried out.
2. The Horticulture Marketing Inspectorate (HMI) for England and Wales and the Scottish Government's Horticulture and Marketing Unit (HMU) for Scotland are the inspection bodies of the United Kingdom in charge of the proper checks within the meaning of the second subparagraph of Article 15(2).

Article 3

Amendment of Implementing Regulation (EU) No 543/2011

Annex IV to Implementing Regulation (EU) No 543/2011 is replaced by the text in the Annex to this Regulation.

Article 4

Entry into force and application

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

It shall apply from 1 January 2021.

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

Done at Brussels, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

‘ANNEX IV

Third countries where the conformity checks have been approved under Article 15 and the products concerned

Country	Products
Switzerland	Fresh fruit and vegetables
Morocco	Fresh fruit and vegetables
South Africa	Fresh fruit and vegetables
Israel ⁽¹⁾	Fresh fruit and vegetables
India	Fresh fruit and vegetables
New Zealand	Apples, pears and kiwi fruit
Senegal	Fresh fruit and vegetables
Kenya	Fresh fruit and vegetables
Turkey	Fresh fruit and vegetables
United Kingdom ⁽²⁾	Fresh fruit and vegetables’

⁽¹⁾ The Commission’s approval under Article 15 is given to fruit and vegetables originating within the State of Israel, excluding the territories under Israeli administration since June 1967, namely the Golan Heights, the Gaza Strip, East Jerusalem and the rest of the West Bank.

⁽²⁾ In accordance with the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, and in particular Article 5(4) of the Protocol on Ireland/Northern Ireland in conjunction with Annex 2 to that Protocol, for the purposes of this Annex references to the United Kingdom do not include Northern Ireland.

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2103
of 15 December 2020
amending Regulation (EC) No 1295/2008 on the importation of hops from third countries

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 190(4) thereof,

Whereas:

- (1) Annex I to Commission Regulation (EC) No 1295/2008 ⁽²⁾ lists the agencies in third countries that are authorised to issue the attestations accompanying hop products imported from those countries. Those attestations are recognised as equivalent to the certificate provided for in Article 77 of Regulation (EU) No 1308/2013.
- (2) It is the responsibility of the agencies concerned in those third countries to keep the information provided in Annex I to Regulation (EC) No 1295/2008 up to date and to communicate that information to the Commission in a spirit of close cooperation.
- (3) Following the withdrawal of the United Kingdom from the Union on 1 February 2020 and in view of the end of the transition period provided for in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (Withdrawal Agreement) on 31 December 2020, the United Kingdom sent the Commission a request to have its authorities listed as competent authorities of a third country for the purposes of marketing standards in certain sectors. In particular, the United Kingdom has undertaken to comply with the requirements set for the marketing of hops and hop products after the end of the transition period and has authorised an agency to issue attestations of equivalence pursuant to Article 190(2) of Regulation (EU) No 1308/2013 and Article 3 of Regulation (EC) No 1295/2008.
- (4) The attestations issued by the agency authorised by the United Kingdom should therefore be recognised as equivalent in respect of hops and that agency should be listed in Annex I to Regulation (EC) No 1295/2008, without prejudice to the application of Union law to and in the United Kingdom in respect of Northern Ireland in accordance with Article 5(4) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement in conjunction with Annex 2 to that Protocol.
- (5) As Regulation (EC) No 1295/2008 applies to and in the United Kingdom in respect of Northern Ireland, attestations issued by the authorities of the United Kingdom have to be understood as referring only to Great Britain.
- (6) In addition, Australia sent the Commission a request to amend the name and address of the competent agency authorised to issue attestations of equivalence. For reasons of clarity, it is appropriate to replace Annex I to Regulation (EC) No 1295/2008 in its entirety.
- (7) Regulation (EC) No 1295/2008 should therefore be amended accordingly.
- (8) To ensure legal certainty and in order to guarantee a smooth transition of trade flows in the sector concerned, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union* and apply from 1 January 2021.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 1295/2008 of 18 December 2008 on the importation of hops from third countries (OJ L 340, 19.12.2008, p. 45).

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EC) No 1295/2008

Annex I to Regulation (EC) No 1295/2008 is replaced by the text in the Annex to this Regulation.

Article 2

Entry into force and application

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

It shall apply from 1 January 2021.

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

Done at Brussels, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

‘ANNEX I

AGENCIES AUTHORISED TO ISSUE ATTESTATIONS IN RESPECT OF:

Hop cones CN code: ex 1210

Hop powders CN code: ex 1210

Saps and extracts of hops CN code: 1302 13 00

Country of origin	Authorised agencies	Address	Code	Telephone	Fax	e-mail (optional)
(AR) Argentina	Coordinación Regional Temática de Protección Vegetal (CRTPV). Servicio Nacional de Sanidad y Calidad Agroalimentaria (SENASA) Centro Regional Patagonia Norte	Calle 9 de Julio 933. General Roca, Provincia de Río Negro, Cod 8334	(54-298)	44 28 594 44 32 190	44 28 594 44 32 190	groca@senasa.gov.ar cpaulovich@senasa.gov.ar jesparza@senasa.gov.ar
	Servicio Nacional de Sanidad y Calidad Agroalimentaria (SENASA)	Av. Pasco Colon 367 Ciudad Aut. de Buenos Aires, C1063ACD	(54-11)	41 21 50 00	41 21 50 00	webmaster@senasa.gob.ar cdei@senasa.gob.ar
(AU) Australia	Biosecurity Tasmania - Department of Primary Industries, Parks, Water and Environment	13 St John's Avenue, New Town TAS 7008 Hobart TAS 7000, Australia	(61-3)	62 33 33 52	03 6165 3777	Biosecurity.Tasmania@dpiwwe.tas.gov.au or Export.Enquiries.Tas@dpiwwe.tas.gov.au
(CA) Canada	Plant Protection Division, Animal and Plant Health Directorate, Food	Floor 2, West Wing 59, Camelot Drive Napean, Ontario, K1A0Y9	(1-613)	952 80 00	991 56 12	

	Production and Inspection Branch, Agriculture and Agri-food Canada					
(CH) Switzerland	Labor Veritas	Engimattstrasse 11, Postfach 353, CH-8027 Zürich	(41-44)	283 29 30	201 42 49	admin@laborveritas.ch
(CN) China	Tianjin Airport Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China	No 33 Youyi Road, Hexi District Tianjin 300201	(86-22)	28 13 40 78	28 13 40 78	ciqtj2002@163.com
	Tianjin Economic and Technical Development Zone Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China	No 8, Zhaofaxincun 2nd Avenue, TEDA Tianjin 300457	(86-22)	662 98-343	662 98-245	zhujw@tjciq.gov.cn
	Inner Mongolia Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China	No 12 Erdos Street, Saihan District, Huhhot City Inner Mongolia 010020	(86-471)	434-1943	434-2163	zhaoxb@nmciq.gov.cn
	Xinjiang Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China	No 116 North Nanhu Road Urumqi City Xinjiang 830063	(86-991)	464-0057	464-0050	xjciq_jw@xjciq.gov.cn

(NZ) New Zealand	Ministry for Primary Industries	P.O. Box 2526, Wellington 6140	(64-4)	830 1574	894 0300	
(RS) Serbia	Institut za ratarstvo i povrtarstvo/ Institute of Field and Vegetable Crops	21000 Novi Sad Maksima Gorkog 30.	(381-21)	780 365 Operator: 4898 100	780 198	institut@ifvcns.ns.ac.rs
(UA) Ukraine	Productional-Technical Centre (PTZ) Ukrhmel	Hlebnaja 27262028 Zhitomir	(380)	37 21 11	36 73 31	
(GB) United Kingdom (*)	Rural Payments Agency (RPA)	Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH United Kingdom	(+44)	(+44) 3300 416 500	-	hops.exports@rpa.gov.uk
(US) United States	Washington Department of Agriculture State Chemical and Hop Lab	21 N. 1st Ave. Suite 106 Yakima, WA 98902	(1-509)	225 76 26	454 76 99	
	Idaho Department of Agriculture Division of Plant Industries Hop Inspection Lab	2270 Old Penitentiary Road P.O. Box 790 Boise, ID 83701	(1-208)	332 86 20	334 22 83	
	Oregon Department of Agriculture Commodity Inspection Division	635 Capital Street NE Salem, OR 97310-2532	(1-503)	986 46 20	986 47 37	
	California Department of Food and Agriculture (CDFA-CAC)	3292 Meadowview Road Sacramento, CA 95832	(1-916)	445 00 29 ou 262 14 34	262 15 72	

	Division of Inspection Services Analytical Chemistry Laboratory					
	USDA, GIPSA, FGIS	1100 NW Naito Parkway Portland, OR 97209-2818	(1-503)	326 78 87	326 78 96	
	USDA, GIPSA, TSD, Tech Service Division, Technical Testing Laboratory	10383 Nth Ambassador Drive Kansas City, MO 64153-1394	(1-816)	891 04 01	891 04 78	
(ZA) South Africa	CSIR Food Science and Technology	PO Box 3950001 Pretoria	(27-12)	841 31 72	841 35 94	
(ZW) Zimbabwe	Standards Association of Zimbabwe (SAZ)	Northend Close, Northridge Park Borrowdale, P.O. Box 2259 Harare	(263-4)	88 20 17, 88 20 21, 88 55 11	88 20 20	info@saz.org.zw saz.org.zw'

(*) In accordance with the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, and in particular Article 5(4) of the Protocol on Ireland/Northern Ireland in conjunction with Annex 2 to that Protocol, for the purposes of this Annex references to the United Kingdom do not include Northern Ireland.

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2104**of 15 December 2020****amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval period of the active substance paraffin oil****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular the first paragraph of Article 17 thereof,

Whereas:

- (1) Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽²⁾ sets out the active substances deemed to have been approved under Regulation (EC) No 1107/2009.
- (2) Commission Implementing Regulation (EU) 2017/555 ⁽³⁾ extended the approval period of the active substance paraffin oil until 31 December 2020.
- (3) An application for the renewal of the approval of the active substance was submitted in accordance with Commission Implementing Regulation (EU) No 844/2012 ⁽⁴⁾.
- (4) Due to the fact that the assessment of the substance has been delayed for reasons beyond the control of the applicants, the approval of the active substance is likely to expire before a decision is taken on its renewal. It is therefore necessary to extend the approval period by one year.
- (5) It is therefore appropriate to amend the relevant entry 295 in Part A of the Annex to Implementing Regulation (EU) No 540/2011, so as to extend the approval period of the active substance until 31 December 2021.
- (6) Implementing Regulation (EU) No 540/2011 should be amended accordingly.
- (7) Taking into account the fact that the approval of the substance expires on 31 December 2020, this Regulation should enter into force as a matter of urgency.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Part A of the Annex to Implementing Regulation (EU) No 540/2011 is amended as set out in the Annex to this Regulation.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2017/555 of 24 March 2017 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of several active substances listed in Part B of the Annex to Implementing Regulation (EU) No 686/2012 (AIR IV renewal programme) (OJ L 80, 25.3.2017, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) No 844/2012 of 18 September 2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 252, 19.9.2012, p. 26).

Article 2

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

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

Done at Brussels, 15 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Part A of the Annex to Implementing Regulation (EU) No 540/2011 is amended as follows:

- (1) in the sixth column, expiration of approval, of row 295, Paraffin oil, the date is replaced by '31 December 2021'.
-

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2105**of 15 December 2020****renewing the approval of the active substance etoxazole as a candidate for substitution in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009, of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 20(1) in conjunction with Article 24(1) thereof,

Whereas:

- (1) Commission Directive 2005/34/EC ⁽²⁾ included etoxazole as an active substance in Annex I to Council Directive 91/414/EEC ⁽³⁾.
- (2) Active substances included in Annex I to Directive 91/414/EEC are deemed to have been approved under Regulation (EC) No 1107/2009 and are listed in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽⁴⁾.
- (3) The approval of the active substance etoxazole, as set out in Part A of the Annex to Implementing Regulation (EU) No 540/2011, expires on 31 July 2021.
- (4) An application for the renewal of the approval of the active substance etoxazole was submitted in accordance with Article 1 of Commission Implementing Regulation (EU) No 844/2012 ⁽⁵⁾ within the time period provided for in that Article.
- (5) The applicant submitted the supplementary dossiers required in accordance with Article 6 of Implementing Regulation (EU) No 844/2012. The application was found to be complete by the rapporteur Member State.
- (6) The rapporteur Member State prepared a draft renewal assessment report in consultation with the co-rapporteur Member State and submitted it to the European Food Safety Authority ('the Authority') and the Commission on 20 September 2016.
- (7) The Authority made the supplementary summary dossier available to the public. The Authority also circulated the draft renewal assessment report to the applicant and to the Member States for comments and launched a public consultation on it. The Authority forwarded the comments received to the Commission.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Directive 2005/34/EC of 17 May 2005 amending Council Directive 91/414/EEC to include etoxazole and tepraloxydim as active substances (OJ L 125, 18.5.2005, p. 5).

⁽³⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

⁽⁵⁾ Commission Implementing Regulation (EU) No 844/2012 of 18 September 2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 252, 19.9.2012, p. 26).

- (8) On 12 September 2017, the Authority communicated to the Commission its conclusion ⁽⁶⁾ on whether etoxazole can be expected to meet the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009. The Commission presented a renewal report and the draft Regulation for etoxazole on 21 March 2018 and a revised version of the renewal report in March 2020 to the Standing Committee on Plants, Animals, Food and Feed.
- (9) As regards the criteria to identify endocrine disrupting properties introduced by Commission Regulation (EU) 2018/605 ⁽⁷⁾, the conclusion of the Authority indicates that, based on the scientific evidence, it is highly unlikely that etoxazole is an endocrine disrupter via the estrogenic, androgenic and thyroidogenic modalities. Furthermore, the available evidence indicates that etoxazole is unlikely to be an endocrine disruptor via the steroidogenic modality. Thus, the Commission concludes that etoxazole is not to be considered as having endocrine disrupting properties.
- (10) The Commission invited the applicant to submit its comments on the conclusion of the Authority and, in accordance with the third paragraph of Article 14(1) of Implementing Regulation (EU) No 844/2012, on the renewal report. The applicant submitted its comments on both versions of the renewal report, which have been carefully examined.
- (11) It has been established with respect to one or more representative uses of at least one plant protection product containing the active substance etoxazole that the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009 are satisfied.
- (12) The Commission, however, considers that etoxazole is a candidate for substitution pursuant to Article 24 of Regulation (EC) No 1107/2009. Etoxazole is considered a bioaccumulative and toxic substance in accordance with points 3.7.2.2 and the first sub point of 3.7.2.3 of Annex II to Regulation (EC) No 1107/2009. Etoxazole therefore fulfils the condition set in the second indent of point 4 of Annex II to Regulation (EC) No 1107/2009.
- (13) It is therefore appropriate to renew the approval of etoxazole as a candidate for substitution pursuant to Article 24 of Regulation (EC) No 1107/2009.
- (14) The risk assessment for the renewal of the approval of the active substance etoxazole is based on representative uses as an acaricide. While it is not necessary, in the light of this risk assessment, to maintain the restriction to use only as an acaricide, it is, however, necessary to provide, in accordance with Article 14(1) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, for certain conditions and restrictions. It is, in particular, appropriate to restrict the use of plant protection products containing etoxazole to use on ornamental plants in permanent greenhouses. The restriction to ornamentals aims to exclude any dietary exposure of consumers because the risk assessment for processed commodities could not be finalised and uncertainties are too high. As high risk was identified to aquatic organisms, non-target arthropods and soil mites, the restriction to greenhouses as defined in Article 3 of Regulation (EC) No 1107/2009 aims to avoid exposure to the environment and non-target organisms.
- (15) In order to increase the confidence in the conclusion that etoxazole does not have endocrine disrupting properties, the applicant should provide an updated assessment, in accordance with point 2.2(b) of Annex II to Regulation (EC) No 1107/2009, of the criteria laid down in points 3.6.5 and 3.8.2 of Annex II to Regulation (EC) No 1107/2009, and in accordance with the guidance for the identification of endocrine disruptors ⁽⁸⁾.
- (16) Implementing Regulation (EU) No 540/2011 should therefore be amended accordingly.

⁽⁶⁾ EFSA Journal 2017;15(10):4988. Available online: www.efsa.europa.eu

⁽⁷⁾ Commission Regulation (EU) 2018/605 of 19 April 2018 amending Annex II to Regulation (EC) No 1107/2009 by setting out scientific criteria for the determination of endocrine disrupting properties (OJ L 101, 20.4.2018, p. 33).

⁽⁸⁾ Guidance for the identification of endocrine disruptors in the context of Regulations (EU) No 528/2012 and (EC) No 1107/2009; <https://www.efsa.europa.eu/en/efsajournal/pub/5311>.

- (17) Implementing Regulation (EU) 2020/869 ⁽⁹⁾ extended the approval period of etoxazole to 31 July 2021 in order to allow the renewal process to be completed before the expiry of the approval period of that active substance. However, given that a decision on renewal has been taken ahead of that extended expiry date, this Regulation shall apply from 1 February 2021.
- (18) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Renewal of the approval of the active substance

The approval of the active substance etoxazole is renewed as set out in Annex I.

Article 2

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 3

Entry into force and date of application

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

It shall apply from 1 February 2021.

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

Done at Brussels, 15 December 2020.

For the Commission

The President

Ursula VON DER LEYEN

⁽⁹⁾ Commission Implementing Regulation (EU) 2020/869 of 24 June 2020 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances beflubutamid, benalaxyl, benthiavalicarb, bifenazate, boscalid, bromoxynil, captan, cyazofamid, dimethomorph, ethephon, etoxazole, famoxadone, fenamiphos, flumioxazine, fluoxastrobilin, folpet, formetanate, metribuzin, milbemectin, Paecilomyces lilacinus strain 251, phenmedipham, phosmet, pirimiphos-methyl, propamocarb, prothioconazole and S-metolachlor (OJ L 201, 25.6.2020, p. 7).

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
etoxazole CAS No 153233-91-1 CIPAC No 623	(RS)-5-tert-butyl-2-[2-(2,6-difluorophenyl)-4,5-dihydro1,3-oxazol-4-yl]phenetole	≥ 948 g/kg	1 February 2021	31 January 2028	Only uses on ornamental plants in permanent greenhouses shall be authorised. For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the renewal report on etoxazole, and in particular Appendices I and II thereto, shall be taken into account. In this overall assessment Member States shall pay particular attention to: — possible uptake of persistent soil metabolites in rotational crops; — the protection of operators, ensuring that conditions of use include the application of adequate personal protective equipment. The applicant shall submit to the Commission, the Member States and the Authority by 5 January 2023 confirmatory information as regards points 3.6.5 and 3.8.2 of Annex II of Regulation (EC) No 1107/2009 including an updated assessment of the information already submitted and, where relevant, further information.

⁽¹⁾ Further details on the identity and the specification of the active substance are provided in the renewal report.

ANNEX II

The Annex to Commission Implementing Regulation (EU) No 540/2011 is amended as follows:

- (1) in Part A, entry 99 on etoxazole is deleted;
 (2) in Part E, the following entry is added:

No	Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
'13	etoxazole CAS No 153233-91-1 CIPAC No 623	(RS)-5-tert-butyl-2-[2-(2,6-difluorophenyl)-4,5-dihydro-1,3-oxazol-4-yl]phenetole	≥ 948 g/kg	1 February 2021	31 January 2028	Only uses on ornamental plants in permanent greenhouses shall be authorised. For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the renewal report on etoxazole, and in particular Appendices I and II thereto, shall be taken into account. In this overall assessment Member States shall pay particular attention to: — possible uptake of persistent soil metabolites in rotational crops; — the protection of operators, ensuring that conditions of use include the application of adequate personal protective equipment. The applicant shall submit to the Commission, the Member States and the Authority by 5 January 2023 confirmatory information as regards points 3.6.5 and 3.8.2 of Annex II of Regulation (EC) No 1107/2009, including an updated assessment of the information already submitted and, where relevant, further information.'

⁽¹⁾ Further details on the identity and the specification of the active substance are provided in the renewal report.

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2020/2106

of 14 December 2020

on a safeguard measure taken by Finland pursuant to Directive 2006/42/EC of the European Parliament and of the Council, to prohibit the placing on the market of Biltema Nordic Services' engine hoist shop crane with model reference 15-371, manufactured by Biltema Nordic Services AB and distributed on the Finnish market by Biltema Suomi Oy

(notified under document C(2020) 8781)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC ⁽¹⁾, and in particular the second subparagraph of Article 11(3) thereof,

Whereas:

- (1) On 20 March 2019, Finland informed the Commission of its safeguard measure of 6 February 2019, taken in accordance with Article 11(1) of Directive 2006/42/EC, and prohibiting the placing on the market of Biltema Nordic Services' engine hoist shop crane with model reference 15-371, manufactured by Biltema Nordic Services AB, Gamisonsgatan 26, 25466 Helsingborg, Sweden ('the manufacturer') and distributed on the Finnish market by Biltema Suomi Oy, Aftonrådevägen 2, 00750 Helsingfors, Finland.
- (2) Finland took the measure because it considered that the engine hoist shop crane did not satisfy several essential health and safety requirements ('EHSR') set out in the following sections of Annex I to Directive 2006/42/EC:
- (3) Specifically, Finland indicated that:
- (4) The crane is not mechanically strong, in breach of the EHSR on Mechanical Strength in point 4.1.2.3 of Annex I to Directive 2006/42/EC.
- (5) The crane is not stable and it is difficult to move, in breach of the EHSRs on Risk of loss of stability in point 1.3.1 and on Risks due to lack of stability in point 4.1.2.1 of Annex I to Directive 2006/42/EC.
- (6) There are errors in the installation instructions concerning the attachment of the wheels and there are errors in the printed instructions concerning the incorrect use of the machine, in breach of the EHSRs on Principles of safety integration in point 1.1.2 and on Instructions in point 1.7.4 of Annex I to Directive 2006/42/EC.
- (7) After receiving the notification of the safeguard measure taken by Finland, the Commission entered into consultation with the parties concerned in order to hear their views. The Commission sent a letter to the manufacturer, the distributor and the Finnish Safety and Chemicals Agency on 23 December 2019 to which the manufacturer and distributor did not respond. The Finnish Safety and Chemicals Agency responded on 13 January 2020, mentioning that Biltema Suomi Oy did not contest the Finnish decision or its content following the adoption of the decision. The Finnish Safety and Chemicals Agency also mentioned that they have no further updates on the case.

⁽¹⁾ OJ L 157, 9.6.2006, p. 24.

- (8) Taking account of the information provided by Finland with respect to the safeguard measure, which has not been contradicted by the manufacturer or distributor, it should be concluded that the engine hoist shop crane with model reference 15-371 fails to satisfy the above-mentioned essential health and safety requirements set out in Annex I to Directive 2006/42/EC and the deficiencies are liable to compromise the health and safety of persons.
- (9) Therefore, the safeguard measure taken by Finland should be considered as justified,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by Finland, prohibiting the placing on the market of engine hoist shop crane with model reference 15-371, manufactured by Biltema Nordic Services AB (Sweden) and distributed on the Finnish market by Biltema Suomi Oy (Finland), is justified.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 14 December 2020.

For the Commission
Thierry BRETON
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2020/2107
of 14 December 2020
amending Decision 2007/25/EC as regards its period of application
(notified under document C(2020) 8789)
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 ⁽¹⁾, and in particular Article 36(1) thereof,

Whereas:

- (1) Commission Decision 2007/25/EC ⁽²⁾ lays down certain protection measures in relation to highly pathogenic avian influenza (HPAI) and movements of pet birds accompanying their owners into the Union. It was adopted in response to outbreaks of HPAI of subtype H5N1, with a view to protecting animal and human health in the Union and it applies until 31 December 2020.
- (2) Outbreaks of HPAI of different subtypes of H5 and more rarely of H7 viruses continue to occur worldwide in poultry and other captive birds. HPAI has become endemic in several third countries and has reached other third countries for the first time. The threat of the introduction of the HPAI virus into the Union via non-commercial movements of pet birds from third countries persists and therefore the risk mitigation measures laid down in Decision 2007/25/EC should be maintained.
- (3) A delegated act and an implementing act laying down animal health and certification requirements for the non-commercial movement of pet birds into the Union have been prepared under Regulation (EU) No 576/2013. However, certain provisions of those acts are still under discussions and, therefore, those two acts, which are intended to replace on a permanent basis the protection measures currently laid down in Decision 2007/25/EC, will not be adopted before 31 December 2020, namely the date of expiry of Decision 2007/25/EC.
- (4) Accordingly, in view of the global epidemiological situation as regards HPAI it is necessary to prolong the period of application of Decision 2007/25/EC until 31 December 2021, by which time the delegated act and implementing act, which lay down the requirements intended to replace those currently laid in Decision 2007/25/EC, should be adopted.
- (5) Decision 2007/25/EC should therefore be amended accordingly.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

In Article 6 of Decision 2007/25/EC, the date ‘31 December 2020’ is replaced by ‘31 December 2021’.

⁽¹⁾ OJ L 178, 28.6.2013, p. 1.

⁽²⁾ Commission Decision 2007/25/EC of 22 December 2006 as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community (OJ L 8, 13.1.2007, p. 29).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 14 December 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission

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