



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.6.2006
COM(2006) 310 final

Proposal for a

COUNCIL REGULATION

**imposing a definitive anti-dumping duty on imports of potassium chloride originating in
Belarus and Russia**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 23 December 2005 ('the basic Regulation') in the proceeding concerning imports of potassium chloride originating in Belarus and Russia.

- **General context**

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

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

The Council, by Regulation (EEC) No 3068/92 imposed definitive anti-dumping duties on imports of potash originating, *inter alia*, in Belarus and Russia.

Following an expiry review pursuant to Article 11(2) and an interim review pursuant to Article 11(3) of the basic Regulation, the Council, by Regulation No 969/2000, decided that the above-mentioned measures should be maintained and amended the form of the measures. The measures were imposed in the form of a fixed amount in euro per tonne for the various categories and grades of potash.

By Regulation (EC) No 992/2004, the Council provided for the exemption from the anti-dumping duties of imports into the new Member States that acceded to the European Union on 1 May 2004 made under the terms of special undertaking offers, and authorised the Commission to accept those enlargement undertakings.

By Regulation (EC) No 1002/2004, the Commission accepted special enlargement undertakings from two exporting producers in Russia and one in Belarus. By Regulation (EC) No 858/2005, the Commission accepted new special undertakings from these exporting producers for a further period which ended on 13 April 2006.

By Regulation (EC) 1891/2005, the Council amended Regulation (EEC) No 3068/92 replacing the fixed amounts of duties with individual *ad valorem* duty for all potash types manufactured by the Russian applicants. By Decision 2005/802/EC, the Commission accepted EU25 wide undertakings from the two Russian producers.

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

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

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

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

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

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

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 13 April 2005, the Commission initiated an anti-dumping expiry review investigation with regard to imports of potassium chloride originating in Belarus and Russia. The purpose of this investigation was to examine whether there is continuation or recurrence of dumping regarding imports of potassium chloride originating in Belarus and Russia, resulting in a continuation or recurrence of injury to the Community industry. On the same date the Commission initiated a partial interim review investigation limited to the dumping aspects with regard to imports of potassium chloride originating in Belarus.

The investigation showed that imports of potassium chloride originating in Belarus and Russia were dumped, and a likelihood of continuation of injury was established. It is therefore concluded that anti-dumping measures have to be maintained on imports from Belarus and Russia. Moreover, as a result of the interim review investigation the form and the level of the anti-dumping duties applicable to imports of potassium chloride originating in Belarus should be amended to reflect the results of the investigation.

It is therefore proposed that the Council adopts the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* by 12 July 2006 at the latest.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 23 December 2005.

- **Subsidiarity principle**

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

- **Proportionality principle**

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

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

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

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

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

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation') and in particular Article 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) The Council, by Regulation (EEC) No 3068/92² ('the original Regulation'), imposed definitive anti-dumping duties on imports of potassium chloride ('potash' or 'the product concerned') originating, *inter alia*, in Belarus and Russia ('the countries concerned').
- (2) Following an expiry review pursuant to Article 11(2) and an interim review pursuant to Article 11(3) of the basic Regulation ('the previous investigation') the Council, by Regulation No 969/2000³, decided that the above-mentioned measures should be maintained and amended the form of the measures. The measures were imposed in the form of a fixed amount in euro per tonne for the various categories and grades of potash.
- (3) By Regulation (EC) No 992/2004⁴, the Council provided for the exemption from the anti-dumping duties of imports into the new Member States that acceded to the European Union on 1 May 2004 ('the EU-10') made under the terms of special undertaking offers ('enlargement undertakings'), and authorised the Commission to accept those enlargement undertakings. On this basis, the Commission, by Regulation

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

² OJ L 308, 24.10.1992, p. 41.

³ OJ L 112, 11.5.2000, p. 4. Corrigendum published in OJ L 2, 5.1.2001, p. 42.

⁴ OJ L 182, 19.5.2004, p. 23.

- (EC) No 1002/2004⁵, accepted enlargement undertakings from (i) an exporting producer in Belarus jointly with companies situated in Austria, Lithuania and Russia, (ii) from an exporting producer in Russia jointly with companies situated in Russia and Austria, and (iii) from an exporting producer in Russia jointly with a company situated at the time of acceptance in Cyprus.
- (4) By Regulation (EC) No 858/2005⁶, the Commission accepted new undertakings from the exporting producers mentioned above until 13 April 2006.
- (5) Following two separate partial interim review investigations pursuant to Article 11(3) of the basic Regulation, requested by the Russian exporting producers JSC Silvinit and JSC Uralkali, the Council, by Regulation (EC) 1891/2005⁷, amended Regulation (EEC) No 3068/92 replacing the fixed amounts of duties with individual *ad valorem* duties for all potash types manufactured by these Russian companies. By Commission Decision No 2005/802/EC⁸, undertakings were accepted from the two applicant companies.
- (6) Following the publication of a notice of impending expiry of the anti-dumping measures in force⁹, the measures on imports originating in Ukraine expired on 12 May 2005 since no request for an expiry review was lodged.

2. Requests for review

2.1. Request for an expiry review

- (7) Following the publication of the above-mentioned notice of impending expiry, the Commission received a request to review these measures with regard to Russia and Belarus pursuant to Article 11(2) of the basic Regulation.
- (8) The request was lodged on 10 February 2005 by the European Potash Producers Association ('the applicant') on behalf of producers, whose collective output constitutes about 99% of the Community production of potash, i.e. a major proportion of the total Community production.
- (9) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry. Indeed, the applicant alleged that potash from the countries concerned is still being sold at dumped prices in the Community. The applicant also claimed that imports of the product concerned from Belarus and Russia have increased and the volumes and the prices of the imported product have continued to have a negative impact on the market share held, the quantities sold and the level of prices charged by the Community industry, resulting in substantial adverse effects on the overall performance and financial situation of the Community industry. Finally, the applicant alleged the likelihood of further injurious dumping and presented evidence that if

⁵ OJ L 183, 20.5.2004, p. 16. Regulation as amended by Commission Regulation (EC) No 588/2005 (OJ L 98, 16.4.2005, p. 11).

⁶ OJ L 143, 7.6.2005, p. 11.

⁷ OJ L 302, 19.11.2005, p. 14.

⁸ OJ L 302, 19.11.2005, p. 79.

⁹ OJ C 249, 8.10.2004, p. 3.

measures were allowed to lapse the fragile situation of the Community industry would further deteriorate.

- (10) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an investigation through the publication of a notice of initiation¹⁰ pursuant to Article 11(2) of the basic Regulation.

2.2. Request for a partial interim review

- (11) A partial interim review limited to dumping was requested by the sole exporting producer in Belarus, Republican Unitary Enterprise Production Amalgamation Belaruskali ('Belaruskali').
- (12) Belaruskali provided evidence that, as far it is concerned, the circumstances on the basis of which measures were established have changed and that these changes are of a lasting nature.
- (13) Belaruskali demonstrated that a comparison of normal value in an appropriate market economy third country and its export prices to the EU over an extended period would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of the measures at the existing level, which is based on the dumping previously established, would no longer be necessary to offset dumping.
- (14) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of this partial interim review, the Commission initiated an investigation through the publication of a notice of initiation¹¹ pursuant to Article 11(3) of the basic Regulation.

3. The investigation

3.1. Period of investigation

- (15) The investigation of the likelihood of a continuation or recurrence of dumping for the expiry review pursuant to Article 11(2) of the basic Regulation concerning Belarus and Russia covered the period from 1 January to 31 December 2004 ('IP' or the '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 2001 up to the end of the IP ('the period considered').
- (16) The investigation period for the partial interim review pursuant to Article 11(3) of the basic Regulation concerning Belarus is the same as the one of the expiry review.

3.2. Parties concerned by the investigation

- (17) The Commission officially advised the Community producers, the exporters and producers in the exporting countries and the importers/users as well as their

¹⁰ OJ C 89, 13.4.2005, p. 3.

¹¹ OJ C 89, 13.4.2005, p. 7.

representative associations known to be concerned and the representatives of the exporting countries of the initiation of the two reviews. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notices of initiation. In addition, the known producers in Canada, which was selected as the potential analogue country, were contacted and received questionnaires. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

- (18) The three Community producers replied to the questionnaire. Fourteen unrelated importers and/or users also supplied full questionnaire replies and made their views known in writing.
- (19) Replies to the questionnaires were received from three exporting producers in the countries concerned, as well as from five importers in the Community and one exporting trader in Russia which were related to the exporting producers.
- (20) One producer in the analogue country provided a complete questionnaire response and another producer in the analogue country provided detailed information concerning its cost of production of the like product.

3.3. *Interested Parties and verification visits*

- (21) The Commission sought and verified all information deemed necessary to determine whether or not there is a likelihood of a continuation or recurrence of dumping and injury and whether the continued imposition of the measures is in the Community interest or not. The Commission also sought and verified all information deemed necessary to determine the level of dumping for the sole exporting producer in Belarus. Investigations were carried out at the premises of the following companies:
 - (a) Community producers
 - Cleveland Potash Limited, Saltburn, United Kingdom,
 - Iberpotash, S.A., Suria (Barcelona), Spain,
 - K+S Kali GmbH, Kassel, Germany;
 - (b) Exporting producers in Russia
 - JSC Silvinit ('Silvinit'), Solikamsk, Perm Region, Russia,
 - JSC Uralkali ('Uralkali'), Berezniki, Perm Region, Russia;
 - (c) Related exporter to JSC Silvinit and Belaruskali
 - International Potash Company ('IPC'), Moscow, Russia;
 - (d) Related importer of JSC Silvinit and Belaruskali
 - Belurs GmbH ('Belurs'), Vienna, Austria;

- (e) Producers in the analogue country
 - Agrium, Inc. ('Agrium'), Calgary, Alberta, Canada,
 - PCS Potash Corp, Inc ('PCS'). Saskatoon, Saskatchewan, Canada;
- (f) Unrelated importers in the Community
 - AUREPIO SP, Warsaw, Poland;
- (g) Unrelated users in the Community
 - Zakłady Chemiczne "Police" SA, Police, Poland,
 - Fosfan S.A., Szczecin, Poland,
 - Tessenderlo Chemie NV/SA, Brussels, Belgium,
 - Yara SA, Brussels, Belgium.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. The product concerned

- (22) The product concerned is the same as in the previous investigation, i.e. potassium chloride ('potash'). It is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphor, potash). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide (K_2O) on the dry anhydrous product.
- (23) Potash is generally commercialised in either a standard/powder form (standard potash) or in an "other than standard" form that includes but is not limited to a granular form (granular potash). The product is classified into three basic categories, based on the K_2O content, namely:
- potassium content not exceeding 40% K_2O - falling under CN code 3104 20 10,
 - potassium content exceeding 40% K_2O but less than or equal to 62% - falling under CN code 3104 20 50,
 - potassium content over 62% K_2O - falling under CN code 3104 20 90
- and certain special mixtures or blends with a high content of potash, namely:
- potassium content equal to or exceeding 35% K_2O but not exceeding 40% - falling under CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91 and ex 3105 9099,
 - potassium content exceeding 40% K_2O but not exceeding 62% - falling under CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91 and ex 3105 90 99.

As in the previous investigations, it was established that the different types and qualities of potash all share the same basic physical and chemical characteristics and essentially the same basic use. Therefore, they are to be considered as one single product.

2. Like product

- (24) The investigation confirmed that the product concerned and the potash produced and sold by the Community producers on the Community market, as well as the potash produced and sold on the domestic market of the countries concerned and that produced and sold by Canadian producers on the Canadian market have the same basic physical and chemical properties and the same uses. They are therefore considered to be a like product within the meaning of Article 1(4) of the basic Regulation.
- (25) One exporter in Russia requested the exclusion of standard potash with a K₂O content higher than 62%, which, it was claimed, is only used in pharmaceutical applications, has different prices and is delivered as packed (as opposed to the bulk deliveries of potash used as a fertilizer). However, as explained above, the product concerned shares the same basic physical characteristics and basic chemical composition of potash of other grades. Regarding the alleged price differences, the investigation has shown that this product is frequently sold at prices comparable to potash with a K₂O content of 60% - 62%. Furthermore, neither the fact that it has a slightly higher K₂O content nor the way it is packed prevents it from being used as a fertiliser. Therefore, this claim had to be rejected.

C. DUMPING

1. Dumping of imports during the investigation period

1.1. *Belarus*

1.1.1. *Analogue Country*

- (26) Since Belarus is considered a non-market economy country, the Commission had to determine the normal value in this case on the basis of data obtained from producers in a market economy third country, in accordance with Article 2(7) of the basic Regulation. In the notice of initiation, Canada was envisaged as an appropriate analogue country. Canada was also the analogue country used in all previous investigations in this proceeding.
- (27) All interested parties were given the opportunity to comment on the choice of the analogue country.
- (28) The Belarusian authorities argued that Russia would be a more suitable analogue country than Canada because, after the previous investigation, Russia has been acknowledged as a market economy country by the Community. Furthermore, it was alleged that the Canadian domestic market is not more competitive than that of Russia. Finally, they alleged that one of the major Canadian producers is related through a third company to some producers in the Community and, therefore, it would not be appropriate to calculate the normal value for Belarus on the basis of information provided by Canadian companies.

- (29) Furthermore the Belarusian authorities suggested that Russia should be selected as the analogue country because (i) the Belarusian and Russian potash producers used to be part of one industry in the USSR period, (ii) the Russian potash industry has a level of development which is most comparable to that of Belarus, and (iii) the production volume in Russia is more comparable to Belarus than that of Canada. Moreover, Russia would be a more suitable choice as an analogue country because access to raw materials and labour costs in Russia are comparable to these conditions in Belarus. Finally, it was claimed that Russia should be selected since the Russian exporting producers are taking part in the expiry review and the risk of non-co-operation by the Russian companies is negligible.
- (30) Belaruskali alleged that comparability between the access to raw materials and production process in Canada and Belarus was not sufficiently substantiated. Moreover, it alleged that the fact that Canada is the largest producer of potash is of no direct relevance to the selection of the analogue country and that selection of Russia for this purpose would be more suitable.
- (31) The Community industry claimed that the Belarusian and the Canadian mines are comparable in respect of cost structure and efficiency and that the access to raw materials is largely similar in both countries. Furthermore, it claimed that the potash prices in Canada are governed by normal market forces and are not distorted by market isolation or by other factors. Moreover, the Community industry alleged that there are clear indications that some cost factors in Russia do not represent correctly the real cost situation and would need to be adjusted in any event. Finally, it was submitted that there is a close relationship between at least one of the Russian producers of potash and the Belarusian producer via a joint sales company and, therefore, this company would have an interest to demonstrate a low normal value on the Russian market.
- (32) As regards the claims made concerning the suitability of Canada to be used as an analogue country, it has to be recalled that the normal values for Belarus have been established by using Canada as a suitable analogue country in the previous investigations in the same proceeding and that there is no evidence indicating that this choice would no longer be appropriate. Furthermore, it is recalled that Canada is the main producer and exporter of potash world-wide, ahead of Belarus and Russia. With regard to the competition on the Canadian market and the Russian market, it was found that both in terms of production and of the number of operators the Canadian market is at least as competitive as the Russian market. Furthermore, the investigation showed that no duties or other limitations apply to the imports of potash into Canada. With regard to the manufacturing process and access to raw materials, it is to be recalled that the previous investigations have already established that the manufacturing process and access to raw materials are, to a large extent, similar in Canada and in Belarus and no evidence has been put forward indicating that this would have changed.
- (33) As regards the appropriateness of Russia to be used as the analogue country, it was concluded that no compelling reasons were presented by the parties why the information obtained from the Russian market instead of that of the Canadian market should be used as a better basis for establishing the normal value of potash in Belarus. In this regard, it has to be recalled that certain cost elements in Russia were not reasonably reflected in the cost of production of the Russian producers and that these

cost elements had to be adjusted in significant amounts as explained in recital (54). However, it was considered that the relationship of one Russian producer with the Belarusian producer would not necessarily have been preclusive to the possible selection of Russia as the analogue country. The claim that the Russian company would have an interest in demonstrating a low normal value ignores the fact that data used in, *inter alia*, analogue countries is subject to strict scrutiny before it can be used.

- (34) The institutions took note of the allegations presented by the Belarusian authorities concerning the relationship between at least one producer in the analogue country and the Community producers. Consequently, it was examined if such relationship existed between the companies providing the information in Canada and the Community producers. In this regard, the investigation showed that one Canadian producer providing the necessary information was indirectly related to some producers in the Community. The information submitted by this company was verified at the premises of the company and it was found to be accurate and reliable and to thereby be a sound basis for establishing normal value. It was concluded that the relationship of one company in the analogue country with some of the Community producers was not preclusive to selecting Canada as the analogue country. Moreover, it was considered that the Belarusian and Russian producers being part of one industry during the USSR period did not make Russia a more suitable analogue country than Canada, as it was not substantiated how this fact would have contributed to Russia being a more suitable analogue country. With regard to the production volume in Canada, it has to be recalled that Canada is the biggest producer of potash world-wide, selling potash in substantial quantities both domestically and for export. The individual Canadian producers, however, differ from each other in terms of production and sales quantities. This contributes to that the information available concerning the Canadian market is balanced and objective. It should also be recalled that the size of the market is not decisive for the selection of the analogue country and that based on economies of scale the bigger market could only contribute to the benefit of the Belarusian producer. Therefore also this claim was rejected. Finally, as the claim concerning the level of development was not substantiated, it had also to be rejected
- (35) Therefore, the investigation confirmed that Canada should be used as an appropriate analogue country.
- (36) Consequently, calculations were based on the verified information from the two Canadian producers.

1.1.2. *Normal value*

- (37) The domestic sales of the Canadian producer (who provided a complete questionnaire response) of the like product were found to be representative as they represented a major percentage in relation to the product concerned exported to the Community by the exporting producer in Belarus.
- (38) An examination was also made as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the product type in question. In cases where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80% of the total sales volume of that type, and

where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. This was found to be the case for one product type of Agrium which was sold on the Canadian market and exported to the Community by Belaruskali.

- (39) For three product types which were not sold on the domestic market in representative quantities, constructed normal value was used in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. In this regard and in accordance with Article 2(6) of the basic Regulation, the amounts for SG&A and profits were based on actual data pertaining to the production and sale, in the ordinary course of trade, of the like product on the domestic market. The information regarding the cost of production was based on the responses received from the two cooperating Canadian producers.

1.1.3. *Export price*

- (40) Given that the export sales of the cooperating exporter represented the totality of the imports into the Community of the product concerned originating in Belarus during the IP, the determination of the export price was based on the information provided by the cooperating exporting producer in Belarus. It was found that potash sales of Belaruskali to the Community during the investigation period were made 1) directly to independent customers in the Community, 2) through related importers in the Community or 3) through a related trader located in Russia (IPC). The related trader in Russia sold the product either to unrelated customers in the Community or to related importers in the Community.
- (41) With regard to the sales made directly to independent customers in the Community, the prices actually paid or payable to Belaruskali or to IPC by these customers were taken as the basis for calculating the export price.
- (42) With regard to the sales to related importers in the Community by Belaruskali or IPC, the export price was constructed on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments were made for all costs incurred between importation and resale by those importers, including SG&A and duties and assuming a reasonable profit margin. A profit margin of 7,9% was considered to be reasonable for this type of market and was also found in line with the profit of unrelated importers.

1.1.4. *Comparison*

- (43) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments were made where appropriate with regard to transport (including handling costs), ocean freight and insurance costs, packing and credit costs. The adjustments in the export price in respect of inland freight in the exporting country and credit costs were made based on the costs established in the analogue country. For the

export sales made via the related trader in Russia, an adjustment was also made to the export price, pursuant to Article 2(10)(i) of the basic Regulation. The adjustment pursuant to this Article was made at the level of 3% since this level was considered reasonable to reflect commissions paid to independent agents involved in the trade of the product concerned.

1.1.5. *Dumping Margin*

- (44) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price per product type. A comparison of the normal value and the export price of Belaruskali showed a dumping margin of 27,5% during the IP.
- (45) The comparison of the data concerning exports to the Community provided by Belaruskali and the total volume of imports as derived from the Eurostat import statistics indicated that the level of cooperation was high, since as mentioned above, Belaruskali's exports represented the totality of all Community imports from Belarus during the IP.

1.2. *Russia*

1.2.1. *Normal value*

- (46) It was first established for each of the two co-operating exporting producers whether its total domestic sales of the like product were representative, i.e. whether the total volume of such sales represented at least 5% of its total export sales volume to the Community, in accordance with Article 2(2) of the basic Regulation. This was found to be the case for both exporting producers.
- (47) Subsequently, by defining the product types in accordance with the TARIC codes under which the product is classified (i.e. by standard grade or other than standard grade, including granular) and by the packing or form in which it is shipped (i.e. in bulk, in bags or in containers), an analysis was made as to whether the domestic sales of each product type were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5% or more of the total sales volume of the comparable product type exported to the Community. This was the case for 3 out of 4 product types exported to the Community by Uralkali and for 2 out of 3 product types exported to the Community by Silvinit.
- (48) An examination was also made as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the product type in question. In cases where the sales volume of a product type, sold at a net sales price equal to or above the adjusted unit cost, represented more than 80% of the total sales volume of that type, and where the weighted average price of that type was equal to or above the adjusted unit cost, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. This was found to be the case for all those

product types of Silvinit and Uralkali which were both sold domestically and exported to the Community.

- (49) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value because they had not been sold on the domestic market in representative quantities, another method had to be applied. In the absence of any other reasonable method, constructed normal value was used.
- (50) In all cases where constructed normal value was used and in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. In this regard and in accordance with Article 2(6) of the basic Regulation, the amounts for SG&A and profits were based on actual data pertaining to the production and sale, in the ordinary course of trade, of the like product on the domestic market.
- (51) As concerns energy costs, such as electricity and gas used in the mining and production processes of the product concerned, the investigation established that these costs form a significant proportion of the total cost of manufacturing of potash producers, not only in Russia but in other producing countries as well. It was considered appropriate in the present case to also compare the Russian producers' energy purchase costs per unit to those of other major potash producers with similar production methods, output levels and similar natural advantages in order to determine whether the prices paid were not abnormally low and reasonably reflecting the normal costs. As there are no other producers of potash in Russia, this information was sought and obtained from two Canadian producers.
- (52) The data provided showed that the energy requirements of the two Canadian producers were similar to those of the Russian producers and that electricity and gas purchased by these companies was derived from domestic hydro-electric power and major gas fields, as is the electricity and gas used by the Russian companies. The comparison showed that the cost per unit for electricity paid by the Canadian producers was similar to that paid by the Russian producers.
- (53) As concerns gas supplies, it was established on the basis of data found in the published annual report for 2004 of the Russian gas provider OAO Gazprom (whose regional distributor was the supplier to the exporting producers in question) that the domestic price of gas paid by the two Russian producers was around one fifth of the export price of natural gas from Russia. The same report says that 'OAO Gazprom together with the Government of the Russian Federation carry out a lot of work to optimize the regulated gas wholesale prices.' According to the analysis presented in the said report, there is 'a risk of low prices for the natural gas sold in the domestic market' and 'Gazprom Group is required to supply natural gas to Russian consumers at prices regulated by the Federal Tariff Service. As of now, these prices are considerably lower than the international prices for natural gas.' Moreover, as it was found in the previous review investigation concluded in November 2005 by Regulation (EC) No 1891/2005, the annual report of 2003 stated that 'OAO Gazprom did not make any profit in the domestic market'. In this regard, as the gas prices paid by the companies did not increase, there is no indication that this situation would have changed in the IP. Therefore, all available data strongly suggest that the gas prices charged to domestic customers were made at regulated prices far from cost recovery levels. Moreover, the

investigation showed that the price of gas paid by the two Russian producers was significantly lower than the gas price paid by the two Canadian producers.

- (54) In view of the above, it was therefore considered that the prices charged by the regional Russian gas provider to the Russian potash producers in the investigation period could not reasonably reflect the costs associated with the production of gas when compared to the exported price of gas from Russia and the price of a Canadian gas provider to major industrial users in Canada. Therefore, in accordance with Article 2(5) of the basic Regulation, an adjustment to the cost of production for each of the Russian companies was made. In the absence of any other reasonable basis, such an adjustment was made using information concerning the price of gas for export, net of transport costs, value added tax and excise duty. This adjustment was made in accordance with the methodology used in the previous review investigation concluded in November 2005 by Regulation (EC) No 1891/2005.
- (55) As regards the adjustment concerning the prices of natural gas, the Russian authorities put forward that natural comparative or competitive advantages must be properly taken into account in anti-dumping proceedings. Moreover, the Russian authorities alleged that the methodology used for determining profit while constructing the normal value was illegal and unacceptable. To this end, it has to be recalled that no adjustment was effected concerning any referred comparative or competitive advantages. However, an adjustment was made concerning the costs of gas associated with the production of potassium chloride pursuant to Article 2(5) of the basic Regulation as explained in recitals (51) to (54) above as these costs were not reasonably reflected in the records of the parties concerned. With regard to the construction of the normal value, this was done in accordance with Article 2(6) of the basic Regulation as explained in recital (50) above. Consequently, these arguments were rejected.
- (56) As also concerns cost of production, it was claimed by the Community industry that depreciation based conventionally on the acquisition (historical) value of the capital assets would not, in accordance with Article 2(5) of the basic Regulation, reasonably reflect the costs associated with the production of the product concerned. It was submitted, therefore, that an upward adjustment to the Russian producers' costs was required.
- (57) In this regard, the on-the-spot verification visits to the Russian producers showed that the original value of their assets had been determined on the basis of valuations carried out during the privatization process which took place in 1993. These asset values were subsequently revised between 1993 and 1997 as a result of the application of 'revaluation coefficients' issued by the Russian Government to deal with hyperinflation. At the end of 1997, following a Decree of the Russian Government, independent valuations of assets were carried out by independent evaluators. Three basic criteria were adopted in establishing these asset values, one of which was the replacement value of the asset. The result of these independent assessments are reflected in the opening Balance Sheet of the companies in 1998.
- (58) Therefore, in the absence of any substantive evidence showing that depreciation had not been correctly reflected in the accounts of the exporting producers, it is not considered warranted at present time to make any adjustment to depreciation costs in the cost of production data used for establishing the normal value of the companies.

1.2.2. *Export price*

- (59) With regard to Silvinit, it was found that the company's sales of potash to the Community during the investigation period were made 1) directly to independent customers in the Community, 2) through related importers in the Community or 3) through an unrelated trader located in Switzerland. In the case of Uralkali all sales of potash to the Community were made through unrelated traders located in Cyprus and in Switzerland.
- (60) In all cases where exports of potash were made to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable. With regard to the sales to related importers in the Community by the related trader, the export price was constructed on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments were made for all costs incurred between importation and resale by those importers, including SG&A and duties and assuming a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. A profit margin of 7,9% was considered to be reasonable for this type of market and was also found in line with the profit of unrelated importers.

1.2.3. *Comparison*

- (61) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments were made, where appropriate, with regard to indirect taxes, transport (including handling costs), ocean freight and insurance costs, packing and credit costs. Adjustments were also made where the export sales were made via a related company located in a country outside the Community, pursuant to Article 2(10)(i) of the basic Regulation. The adjustment pursuant to this Article was made at the level of 3% since this level was considered reasonable to reflect commissions paid to independent agents involved in the trade of the product concerned.

1.2.4. *Dumping margin*

- (62) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices per product type. This comparison showed the existence of significant dumping of imports of the product concerned by the cooperating exporters at the level of more than 8% for Uralkali and more than 14% for Silvinit.
- (63) The comparison of the data concerning exports to the Community provided by the exporting producers and the total volume of imports as derived from the Eurostat import statistics indicated that the level of cooperation was high, since, the cooperating exporting producers represented the totality of all Community imports from Russia during the IP.

2. Likelihood of continuation of dumping

2.1. General

- (64) The three co-operating producers represent the totality of imports from the countries concerned. The examination of whether it would be likely that dumping continues should measures be repealed was therefore based to a large extent on the information provided by these cooperating exporting producers.

2.1.1. Current Dumping

- (65) In order to determine whether there was a likelihood of continuation of dumping, the Commission investigated the existence of current dumping on exports from the countries concerned to the Community on the grounds that if dumping was taking place, then it was reasonable, in the absence of any information to the contrary, to consider that it would be likely to continue in the future. In this regard, it is recalled that the level of dumping for potash originating in both of the countries concerned continued to be significant (see recitals (26) to (62)).

2.1.2. Relationship between export prices to third countries and the sales price in the Community

- (66) It is also noted that export prices to third countries by all the producers concerned were found to be on average below the sales prices of the Community industry in the Community. This means that the prevailing price level for the product concerned in the Community market makes the Community market a very attractive one for the exporters in the countries concerned. On this basis, it was considered that there is indeed an economic incentive to shift exports from non-EU countries to the more profitable Community market in case of repeal of the measures in force.

2.2. Belarus

2.2.1. Production, production capacity and investment in Belarus

- (67) Belaruskali has managed to increase its production by 25% during the period considered. As the table shows, the production volumes have mainly increased in 2003 and the IP.

	2001	2002	2003	IP
<i>Actual production in Belarus</i>	100	102	114	125

- (68) During the period considered, Belaruskali has increased its production capacity by 3%. A further growth of 12 percentage points in production capacity was foreseen by 2006. In addition, it is noted that whilst Belaruskali was producing potash close to full capacity levels during the IP, it declared a significant further increase in its capacity and total investment in 2005 and 2006. The reported production capacity and investment translated in euros in an indexed form is as follows:

	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004 (IP)</i>	<i>2005*</i>	<i>2006*</i>
<i>Production capacity</i>	100	100	100	103	114	115
<i>Investment</i>	100	132	111	128	175	175

**) based on Belaruskali's estimate*

- (69) Based on the above, it can be concluded that Belaruskali has potential capacity to increase its exports to the Community market should the measures be repealed as Belaruskali declared a further increase of its production capacity and significant growth in its investment activity.

2.2.2. Domestic market in Belarus

- (70) The domestic sales of potash in Belarus remained at a low level during the period considered, representing less than 10% of the total sales of Belaruskali. In fact, the domestic sales volume in Belarus decreased by 3% between 2001 and the IP. As the domestic market was slightly shrinking it could not absorb the increase of the production. This is not likely to change in the future. Therefore, the company has to export an essential part of its production.

2.2.3. Belarusian export sales to other countries

- (71) Information provided by the sole exporting producer in Belarus showed that sales to non-EU countries were made in significant quantities, accounting for 82% of total exports (the main export markets being the People's Republic of China, Brazil and India). Furthermore, export volumes to third countries increased by 25% between 2001 and the IP. Therefore, the investigation confirmed that most of the potash production in Belarus was directed to export markets in increasing quantities.
- (72) The prices of the types of potash sold to the Community by Belaruskali were, on average, found slightly higher than the prices of corresponding types of potash sold to third markets. Since, as concluded in recital (44), export sales from Belarus to the Community were made at dumped levels, this indicated that exports to third markets were also dumped at slightly higher levels than the export sales to the Community. Moreover, the Community market is more attractive to exports of potash at dumped prices from the company concerned due to its slightly higher price level, its proximity, reduced payment risks due to the solvency of customers, and due to favourable payment terms.

2.3. *Russia*

2.3.1. *Production, production capacity and investments in Russia*

- (73) The Russian producers have managed to increase their production by 29% during the period considered. As the table shows, the production volumes have mainly increased during the IP.

	2001	2002	2003	IP
<i>Actual production in Russia</i>	100	104	112	129

- (74) Whilst the production capacity of the two Russian companies had remained stable during the period considered, the companies indicated an increase of 6% by 2006. Furthermore, according to the information submitted by the Russian producers, they still had available capacity to increase production of potash.

	2001	2002	2003	2004 (IP)	2005*	2006*
<i>Production capacity in Russia</i>	100	100	100	100	102	106

- (75) In addition, they reported significant growth in their investment in 2005 and 2006. The reported investment translated into euro in an indexed form is as follows:

	2001	2002	2003	2004 (IP)	2005*	2006*
<i>Investment in Russia</i>	100	64	71	84	103	261

*) based on the Russian companies' estimates

- (76) Based on the above, it can be concluded that the exporting producers in Russia have available capacity to increase their exports to the Community market should the measures be repealed. Moreover, both companies declared significant growth in their investments suggesting a potential further increase in their production capacity.

2.3.2. *Domestic market in Russia*

- (77) The domestic sales of potash in Russia remained at a low level during the period considered, representing, on an average, less than 15% of the total sales of the two companies. The volume of domestic sales in Russia increased by 5% between 2001 and the IP. The growth of the domestic market could not absorb the increase of the production (29%) and therefore the two companies have to export an essential part of their production.

2.3.3. Russian export sales to other countries

- (78) Information provided by the exporting producers showed that sales to non-EU countries were made in significant quantities, accounting for 95% of total exports (the main export markets being the People's Republic of China and Brazil). Furthermore, the Russian exports to third countries grew by 46% between 2001 and the IP. Therefore, the investigation confirmed that most of the potash production in Russia was directed to export markets in increasing quantities.
- (79) The prices of the types of potash sold to the Community by the companies concerned were found to be lower than the prices of corresponding types of potash sold to third markets. However, the Community market is still attractive to exports of potash at dumped prices from the companies concerned due to its proximity, reduced payment risks due to the solvency of customers and due to favourable payment terms.

2.4. Conclusion on the likelihood of continuation of dumping

- (80) The fact that the generally prevailing price level of the Community producers in the Community is higher than the average export price level of the Belarusian and Russian exporting producers to third markets must be considered as an incentive for increasing exports to the Community at dumped prices.
- (81) Since the exporting producers in both Belarus and Russia have unused production capacity and taken that all companies concerned showed significant increase in their total investment and production capacity, it can be concluded that, should the measures be repealed, additional production would be exported to the Community, or sales currently exported to countries outside the Community would be redirected towards the Community market in significant quantities.
- (82) Moreover, the investigation showed that the potash market outside the Community was characterised, during the IP, by certain volatility, in the form of considerable fluctuations of export prices. This volatility is deemed to be the result of an exceptional situation caused by the strong increase in the demand in some emerging markets, such as those of Asia and South America. Under these circumstances, it is likely that significant quantities of potash from Belarus and Russia would be redirected to the rather stable Community market, should the growth in these export markets reach saturation and the increase in demand consequently stop or turn into a decrease. In this respect, it should also be noted that the overseas markets are subject to much higher transportation costs than the Community market, which, being close, is more cost-efficient to reach by boat or rail.
- (83) As regards prices, the investigation showed that imports into the Community originating in Belarus and Russia are still made at dumped prices. Therefore, it is to assume, in the absence of any indication to the contrary, that dumping would likely continue in the future.
- (84) For these reasons, it is concluded that there is a likelihood of continuation of dumped imports from the countries concerned and that the dumped imports would increase considerably should measures be repealed.

D. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

1. Definition of the Community Industry

- (85) The investigation confirmed that the three complainant Community producers represented 99% of the Community production of potash. They therefore constitute the Community industry within the meaning of Article 4(1) of the basic Regulation.
- (86) Since two Community producers are related companies (Cleveland Potash Ltd. and Iberpotash S.A. both belong to the ICL Group, Israel Chemicals Ltd, Tel-Aviv), the Community industry is comprised of only two independent groups of manufacturers, the ICL Group and K+S Kali GmbH.
- (87) As the Community industry is comprised of only two groups of manufacturers, information regarding the Community industry can only be given in indexed form, for confidentiality reasons. For the purposes of the injury analysis, only potash produced by the Community industry was taken into consideration, while resales of purchased potash (mainly potash produced by the ICL Group in Israel) were excluded.
- (88) The analysis of injury indicators has been carried out on the basis of Eurostat data and of the information submitted in the questionnaire responses by the cooperating exporting producers and by the Community industry.

2. Analysis of the situation of the Community industry and of the Community market for potash

2.1. *Community consumption*

- (89) The total consumption of potash in the Community was calculated by adding to the sales of the Community industry on the Community market the imports into the Community of potash originating in the countries concerned and from all other third countries.
- (90) On this basis, Community consumption increased from 7 231 000 tonnes in 2001 to around 8 030 000 tonnes in the IP, i.e. an increase of approximately 11%.

Community consumption in 1000 tonnes	2001	2002	2003	2004 (IP)
EU-10	1 053	1 055	1 154	1 381
<i>Index</i>	<i>100</i>	<i>100</i>	<i>110</i>	<i>131</i>
EU-15	6 177	6 206	6 568	6 649
<i>Index</i>	<i>100</i>	<i>100</i>	<i>106</i>	<i>108</i>
EU-25	7 231	7 262	7 722	8 030
<i>Index</i>	<i>100</i>	<i>100</i>	<i>107</i>	<i>111</i>

- (91) During the period considered, virtually all imports from Belarus and Russia into the EU-15 were made under inward processing relief mechanism ('IPR'), while IPR was not used for the imports into the EU-10. Imports under IPR enter into competition with the like product manufactured by the Community industry, as they are processed in the Community by fertiliser manufacturers who buy part of their raw materials used in the production of complex fertilizers, which are also destined for export, from the Community industry. Imports under IPR therefore were taken into account in line with the consistent practice of the Community institutions, in establishing the Community consumption and the analysis of imports from the countries concerned.

2.2. Imports from the countries concerned

2.2.1. Volume of imports

- (92) During the IP, the exporting producers in the countries concerned sold potash on the EU-10 market under the terms of special enlargement undertakings referred to above in recital (3). The quantities sold under the terms of the undertaking have been taken into account to reflect the presence of the countries concerned on the EU market.
- (93) The volume of imports of potash originating in Russia into the EU-25 increased by 19% during the period considered. The volume of imports originating in Belarus increased, during the same period, by 44%. The overall imports from the countries concerned, calculated on an EU-25 basis, increased by 37% during the period considered. After a slight decrease in 2002 due to a decrease in sales from Belarus mainly to Spain, sales from the countries concerned significantly increased in 2003 and 2004 by around 20% in both years.

Import quantity	2001	2002	2003	2004 (IP)
<i>Belarus EU-15</i>	100	58	104	154
<i>Belarus EU-10</i>	100	105	127	140
<i>Belarus EU-25</i>	100	94	122	144
<i>Russia EU-15</i>	100	88	95	105
<i>Russia EU-10</i>	100	112	98	131
<i>Russia EU-25</i>	100	101	97	119
<i>Countries concerned EU-25</i>	100	96	115	137

2.2.2. Market share

- (94) The market share of the imports from the countries concerned into the Community market increased by 23% during the period considered. However, the increase has not been constant: the market share remained almost stable until 2003 and then suddenly increased in 2004.

Market share of the countries concerned	2001	2002	2003	IP
<i>Belarus EU-15</i>	100	57	98	143
<i>Belarus EU-10</i>	100	105	116	107
<i>Belarus EU-25</i>	100	94	114	129
<i>Russia EU-15</i>	100	88	90	97
<i>Russia EU-10</i>	100	100	90	107
<i>Russia EU-25</i>	100	112	89	100
<i>Countries concerned EU-25</i>	100	95	108	123

2.2.3. Price evolution and price behaviour

2.2.3.1. Price evolution of the imports concerned

- (95) The prices of the imports subject to investigation over the period considered followed a downward trend as the table below shows. There has been a moderate price increase during the IP following an increase in demand in other third countries, mainly in

China. This increase was, however, significantly smaller than the price decreases in the previous years.

Average prices of potash in EUR/tonne (EU-25)	2001	2002	2003	IP
<i>Belarus (Index)</i>	100	95	82	95
<i>Russia (Index)</i>	100	97	78	84
<i>Total (Index)</i>	100	95	82	93

- (96) The average decrease in the price of potash from the countries concerned amounts to 7% during the period considered.

2.2.3.2. Price Behaviour

- (97) In order to establish price undercutting, prices of exports of potash originating in Belarus and Russia for sale to independent customers were compared to invoiced prices made by the Community industry for its sales on the Community market. It was thus established that the undercutting margin for potash of Belarusian origin was 18%, while the undercutting margin for potash originating in Russia was between 17% and 23%.

2.3. *Economic situation of the Community industry*

2.3.1. *Production*

- (98) During the period considered, the total production of potash in the Community has slightly grown with the exception of 2002, when the production slightly decreased due to a shortage of hoisted mineral from the mines for one Community producer. Figures for the total Community production of potash were as follows:

Production	2001	2002	2003	IP
<i>Index</i>	100	95	102	104

2.3.2. *Production capacity*

- (99) Production capacity of the Community industry was stable throughout the period considered. Figures of total production capacity of potash were as follows:

Capacity	2001	2002	2003	IP
<i>Index</i>	100	100	100	100

2.3.3. Capacity utilisation

- (100) Capacity utilisation of the Community industry decreased in 2002 but began to increase in 2003. Over the period considered the capacity utilisation of the Community industry for potash increased by 3%.

Capacity utilisation	2001	2002	2003	IP
<i>Index</i>	100	96	102	103

2.3.4. EU Sales volume

- (101) The total sales volume of the Community industry to unrelated customers in the EU slightly increased by 1% during the period considered as shown below:

EU Sales volume	2001	2002	2003	IP
<i>Index</i>	100	98	102	101

2.3.5. Market share

- (102) The Community industry's market share continually decreased during the period considered as shown below:

EU market share	2001	2002	2003	IP
<i>Index</i>	100	97	95	91

2.3.6. Growth

- (103) Although the Community potash market increased by 11% during the period considered, the Community industry was not in a position to benefit from this. They were only able to increase their EU sales volume by 1%, this is significantly less than the market growth.

2.3.7. Price development

- (104) The investigation showed that the Community producers' average selling price rose in the course of the period considered by 6%. It first remained rather stable between 2001 and 2003, but then increased by 6% between 2003 and the IP. The increase in price coincides with a significant increase in demand in other third countries, mainly in the People's Republic of China. This shows that prices on the Community potash market are influenced by the demand prevailing on other markets. The average sales price of the Community industry for potash on the Community market developed as follows:

Average sales price in EUR/tonne	2001	2002	2003	IP
<i>Index</i>	100	99	100	106

2.3.8. Profitability

- (105) The profitability of domestic sales of the Community industry, expressed as a percentage of net sales, increased during the period considered. While the Community industry suffered losses in 2001 and 2002, they regained profitability in 2003 and 2004. The profitability of the Community industry on the Community market for potash developed as follows:

Profit rate	2001	2002	2003	IP
<i>Index</i>	-100	-497	51	412

2.3.9. Employment, productivity and wages

- (106) Employment in the Community industry remained essentially stable:

Personnel employed in the production of potash	2001	2002	2003	IP
<i>Index</i>	100	100	101	100

2.3.10. Stocks

- (107) The closing stocks of the Community producers for potash constantly decreased by about 27% during the period considered. Closing stocks of the Community industry have been, on a medium-term average, around 500 000 tonnes. Closing stocks at the end of the IP have been below average due to increased sales, in particular because of increased exports, and for logistical reasons. The closing stocks of the Community industry of potash developed as follows:

Closing stocks	2001	2002	2003	IP
<i>Index</i>	100	93	84	73

2.3.11. Investments

- (108) Total investments of the Community industry initially significantly increased between 2001 and 2002, but subsequently decreased to a level 22% below the 2001 figures mainly due to a planned reduction on replacement investments for one Community producer. The investments of the Community industry developed as follows:

Investments	2001	2002	2003	IP
<i>Index</i>	100	147	98	78

2.3.12. Return on investments

- (109) As the net book value of assets used for the production of the like product has changed very little during the period considered, return on investment has developed in parallel with profitability.

Return on Investments	2001	2002	2003	IP
<i>Index</i>	-100	-477	48	412

2.3.13. Cash flow and ability to raise capital

- (110) Total cash flow of the Community industry first decreased considerably between 2001 and 2002, but thereafter increased in 2003 and the IP. During the period considered cash flow increased by 64%.

Cash flow	2001	2002	2003	IP
<i>Index</i>	100	56	127	164

- (111) All the Community producers are part of large corporate groups listed on the stock exchange, which allows them to raise capital within the group.

2.3.14. Magnitude of dumping and recovery from past dumping

- (112) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping found in the IP, given the volume and prices of imports from these two countries, this impact cannot be considered to be negligible. However, it should be noted that the margin for Belarus is lower than the one that was found in the previous investigation. It should also be noted that the volume of dumped imports from Belarus and Russia has increased since the previous investigation.

2.3.15. Conclusion on the situation of the Community industry

- (113) The Community industry is still in a process of recovery from the past dumping. During the period considered this recovery materialised to a certain extent in the increase of sales prices and a positive development of indicators such as production, capacity utilisation, sales volumes and stocks. These positive developments resulted in a profitable situation for the Community industry during the IP. However, the market share showed a negative trend and as said above the Community industry had to cut down investments. Moreover, the profit level achieved is still substantially below the profit which was considered as a level that the Community industry could expect to achieve in the absence of dumped imports, i.e. 9%. Therefore, it can be concluded that the Community industry has partially recovered from the injurious dumping, but is still in a fragile situation.
- (114) Subsequent to disclosure of the findings, one exporter and an interested party claimed that the negative development of some injury indicators was influenced by the fact that one Community producer located in France had ceased its potash production in the course of the period of analysis. In this respect, it should be noted that, since this French producer had ceased its potash production during the year 2001 and its

inclusion in the injury analysis for that year only would have distorted the comparability of data, information relating to that Community producer was never included in the injury indicators.

2.4. *Import volumes and import prices from other third countries*

- (115) The import volume of potash from other third countries increased during the period considered from about 1 016 000 tonnes in 2001 to 1 255 000 tonnes during the IP. This corresponds to an increase of 24%. The major part of the increase is attributable to imports from Israel and Jordan. It should be noted that imports from Israel were predominantly made by companies related to the Community industry.

Imports from other third countries in thousand tonnes	2001	2002	2003	IP	Change 2001-IP
Israel	552	745	740	643	+17%
Jordan	140	180	210	278	+99%
Canada	225	184	174	203	-10%
Other Countries	91	96	95	128	-55%
Total	1 016	1 209	1 223	1 255	+24%

- (116) The market share of imports from other third countries increased slightly from 14% in 2001 to 15% in 2004. Imports from those countries were predominantly made into the EU-15.
- (117) According to Eurostat, the average sales price for these imports decreased from 134,94 EUR per tonne in 2001 to 127,24 EUR per tonne during the IP, but nevertheless always exceeded the prices of the Community industry and were significantly higher than prices of potash originating in Russia and Belarus. In detail, the development was as follows:

Average import prices from other third countries (EUR/tonne)	2001	2002	2003	IP	Change 2001-IP
Israel	119,80	126,25	127,17	125,16	+4%
Jordan	170,55	145,41	123,69	117,02	-31%
Canada	139,83	137,12	120,46	127,51	-9%
Other Countries	159,95	142,94	158,24	157,76	-1%
Total	134,94	132,10	128,03	127,24	-6%

- (118) It follows from the above that, in particular in view of their higher price levels and their rather stable market share, imports from third countries did not affect the current situation of the Community industry.

2.5. *Export activity of the Community industry*

- (119) The Community industry's exports of potash to third countries had a positive trend. The overall increase in exports amounts to 23% in the period considered. Exports had therefore no negative effect on the situation of the Community industry. In detail, the development during the period considered was as follows:

Export sales volumes of the Community industry	2001	2002	2003	IP
<i>Index</i>	<i>100</i>	<i>107</i>	<i>127</i>	<i>123</i>

3. **Conclusion on continuation or recurrence of injury**

3.1. *Current situation of the Community industry*

- (120) As mentioned in recital (90) above, the Community consumption of potash increased by about 11% during the period considered, reaching its highest level in 2004.
- (121) While the market share of the Community industry declined by 9%, the market share of the countries concerned increased by 23% during the period considered.
- (122) The market share of other third countries increased by 1 percentage point to a level of 15% at prices not undercutting the sales prices of the Community industry. Therefore, it is considered that the imports from other third countries have not had any significant impact on the economic situation of the Community industry during the IP.
- (123) At the same time the evolution of the economic situation of the Community industry has been mixed, a number of injury indicators such as market share and investments have developed negatively, while others, such as production, sales volume, sales prices and profitability have improved.
- (124) The investigation showed the existence of abnormally low import prices which continue to be dumped and had a negative effect on the sales volumes, market share and consequently on the profitability of the Community industry. The negative effect on the sales volume is shown by the fact that the increase in sales volume of the Community industry was very small (+1%), when compared to the increase in consumption in the Community market over the period considered (+11%). Only during the last six months of the IP, the situation as to import prices concerned improved somewhat because these prices were raised due to the undertakings in force.
- (125) Overall, the Community industry therefore would remain vulnerable to continuation of injurious dumping, if measures were allowed to lapse.
- (126) On the basis of the elements above, it was found that no clear finding of continuation of injury could be established. It was therefore examined whether there is a likelihood of recurrence of injury.

3.2. *Likelihood of recurrence of injury*

- (127) It was concluded above (see recital (84)) that dumped imports from the countries concerned would increase significantly if measures were to be repealed. Indeed, the Community market is an attractive one because of the geographical proximity compared to the other main export markets (Brazil, China and India) and more favourable payment terms. Furthermore, the domestic markets of the exporting producers only absorb limited parts of their production.
- (128) Production capacity in Belarus and Russia has remained rather stable during the period considered totalling 20 million tonnes of potash, which is about 33% of the world-wide capacity and about 250% of the Community consumption. Important further investments to increase production capacity are planned. Moreover, there is spare production capacity in Russia.
- (129) In addition, the partial recovery of the Community industry described in recital (113) is to a large extent due to the existence of the anti-dumping measures. This recovery would be in danger should measures be repealed. Repealing the measures would lead to the sale of increasing quantities of potash from the countries concerned on the Community potash market. Such an increase in sales can only be accomplished by undercutting existing price levels. Such undercutting of price levels will inevitably cause an erosion of sales prices and a decrease of the profitability of the Community industry, leading to injury.

3.3. *Conclusion on recurrence of injury*

- (130) As shown above, the situation of the Community industry remains vulnerable and fragile. In recital (81) it was concluded that additional production is likely to be exported to the Community from Belarus and Russia if measures would expire. Since these exports are likely to be made at dumped prices, this would result in a deterioration of the sales of the Community industry, its market shares, sales prices as well as the consequent deterioration of its financial situation. On this basis, it is therefore concluded that the expiry of the measures would in all likelihood result in a worsening of the still fragile situation of the Community industry and a recurrence of injury. Consequently, it is proposed that the current anti-dumping measures should be maintained.

E. **COMMUNITY INTEREST**

1. **Introduction**

- (131) Pursuant to Article 21 of the basic Regulation, it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole or not. The determination of the Community interest was based on an appreciation of all the various interests, such as the Community industry, the importers and users of the product concerned. In order to assess the likely impact of a continuation of the measures, the Commission services requested information from all interested parties mentioned above.
- (132) It should be recalled that in the previous investigation the adoption and maintenance of measures was considered not to be against the interest of the Community.

- (133) Due to the large number of importers, it was decided to apply sampling. Sampling questionnaires were sent to 21 importers/users and replies from all were received. The sample taken included 5 Community importers. In accordance with Article 17 of the basic Regulation, this sample covered more than 80% of the total imports and was the largest representative volume of imports which could reasonably be investigated within the time available. Each of the five importers included in the sample submitted a full questionnaire reply.
- (134) Altogether, 23 questionnaires were sent out to users of which 7 submitted questionnaire replies. Furthermore, questionnaires were sent to importer/user organisations. The European Fertilizer Import Association (EFIA) replied to the questionnaire as well as a number of user associations in different Member States.
- (135) On this basis, it was examined whether, despite the findings on continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. Interests of the Community industry

- (136) In the course of this investigation it has been established that the Community industry is viable and competitive, but continues to be in a fragile situation. This is partly due to its shrinking market share in the Community, and also to its unsatisfactory profit situation which has still not recovered to a normal and stable level, supporting the high investment necessary to bring the industry back to a long term sound perspective.
- (137) The trade union association of miners in the Community and the General Workers Union of the United Kingdom came forward arguing that the Community industry provided for an important number of jobs in the Community which would be put at risk if measures would lapse.
- (138) In view of the economic difficulties experienced by the Community industry in the past and the still volatile situation of the market as experienced during the IP, it is considered that, if the measures were allowed to lapse the situation of the Community industry would be put at risk. This carries a high likelihood that the situation of the Community industry would deteriorate again from its currently moderately profitable status. This could entail a severe reduction in investments and in the numbers of employees.
- (139) If, however, measures are maintained, this will allow the Community industry to further recover and in particular gain a perspective which allows the investments necessary to ensure the long-term viability and competitiveness of the industry. Therefore, the continuation of measures is in the interests of the Community industry.

3. Interests of importers (traders)

- (140) The cooperating importers of potash were generally against the prolongation of the anti-dumping measures. They argued that the continuation of measures would have a negative influence by cutting the links to their traditional suppliers, in particular, if undertakings would not be continued. They also argued that the Community producers could, if duties are prolonged, develop a dominant position on the Community market,

thus reducing free competition within the Community to a minimum which would drive up prices in the Community further. One importer, however, argued that the present situation with measures in force guarantees a correct development of the market. Consequently, this importer requested that the anti-dumping measures are maintained.

- (141) Whereas in the EU-15 most of the potash from the countries concerned were imported under the IPR, enlargement undertakings allowed duty-free imports from the countries concerned under certain conditions. Moreover, imports from other third countries remained at a rather stable level, at 15% market share. There was thus substantial competition on the Community market and there is no reason to expect that this would change. The argument concerning the alleged dominant position of the Community industry has therefore to be rejected.
- (142) Subsequent to disclosure of the findings, a number of interested parties insisted that the continuation of the measures would create an anti-competitive situation, whereby the Community industry would enjoy a dominant position. In this respect, it is to be noted that no indication was found during the investigation that the existence of the measures, apart from reducing the effects of injurious dumping, has significantly modified the competitive situation in favour of the Community industry. On the contrary, imports from the countries concerned have even increased and imports from other third countries continue to represent a substantial share of the Community market. Therefore, no element seems to indicate that a continuation of the measures could cause a deterioration of the competitive situation in the Community market.
- (143) As regards the alleged difficult access for traders to imported potash, this claim was not substantiated. Thus, this claim had to be rejected.
- (144) It should also be noted that importers (traders) of potash often also import other products. Although some importers focus their business on potash, for other importers the potash business accounts for as little as 10% of their business. In addition, importers currently focussing on potash have indicated that they could switch their focus to other products demanded by their customer base, primarily other fertilizers. Subsequent to disclosure of the findings, however, one importer and one importers' association claimed that certain importers are heavily depending on imports of potash from Belarus and would hardly be able to switch to other sources of supply in case the measures were maintained. It was found, however, that a shift to other sources of supply, e.g. the Community industry or imports from countries other than Belarus, is indeed a possibility available to importers. Although this shift may have some impact on the economic and financial results of these importers, it is considered that their level of profitability would not be affected so substantially as to undermine their long term viability. In view of all arguments brought forward by importers, it is concluded that the effects of the anti-dumping measures on the financial situation of importers are relatively limited. Indeed, on the basis of the verified questionnaire replies, it was found that the profitability of the importers has not been negatively influenced by the existing anti-dumping measures so far. There are no reasons to believe that this situation would substantially change if measures are maintained.
- (145) It is therefore concluded that a continuation of the measures would not have a substantial impact on the situation of importers (traders).

4. **Interests of users**

4.1. *Farmers*

- (146) No cooperation was obtained from the direct users of potash as a fertiliser (farmers), although their representative organisation received a questionnaire. One farmer's association of a Member State, however, argued that anti-dumping duties would harm the position of the farmers in a competitive market where import prices of inputs like fertilizers are regulated while prices of imported foodstuffs are not.
- (147) This argument has to be rejected because anti-dumping measures do not deal with overall questions concerning agricultural policy. Anti-dumping investigations only aim at re-establishing a situation of fair trade following a behaviour of injurious dumping. In the absence of any other substantial argument and of any indication that the existing anti-dumping measures would have had a negative effect on farmers, it is to be concluded that the continuation of anti-dumping duties will not have a major negative impact for farmers.

4.2. *Fertilizer manufacturers*

- (148) The users submitting questionnaire replies were all fertiliser manufacturers who buy potash from the Community industry and also import it from the countries concerned or from third countries. For them, potash is a raw material for producing fertilisers that often consist of three different nutrients: nitrogen, phosphate and potash (NPK-fertilisers or compound fertilizer). This means that potash is one of the cost elements for their final products, representing between 15 and 30% of the production cost. During the period considered the production costs of fertilisers containing potash significantly decreased in 2002 and 2003, followed by a moderate increase during the IP, without reaching the levels prevailing in 2001. It can therefore be concluded that the anti-dumping measures on potash did not have a significant impact on the cost structure of the fertilizer manufacturers.
- (149) Most of these users argued in the same manner against the continuation of measures as the importers. However, one fertiliser producer pointed out that it would be in its interest to have potash producers both inside and outside the Community also in the future.
- (150) As the competing fertiliser producers in third countries do not pay anti-dumping duties on their purchases of potash, the Community fertiliser manufacturers also claimed that they are unable to compete with the prices of the final product offered by their foreign competitors. In this respect, it should be noted, however, that the Community fertiliser manufacturers have the possibility to import under IPR, i.e. without paying anti-dumping duties. Furthermore, it is recalled that other sources of supply exist, both in third countries not subject to anti-dumping measures, and in the Community. Moreover, the investigation has not shown that these users were unable to compete with imported compound fertilizers on the Community market.
- (151) On the basis of the above, it is concluded that measures have not had a significant negative impact on the situation of users. Indeed, the impact of the measures on the profitability of the fertilizer manufacturers during the period considered was minimal and no elements have been put forward indicating that this would change if measures

were maintained. It is therefore concluded that the interests of users are not such as to prohibit the continuation of measures.

5. Consequences for competition on the Community market

- (152) The measures in their current form clearly have had a stabilising effect on the Community industry which was able to exit the loss making period and regain a moderately profitable situation. This development would not have been possible without measures. However, this could not prevent a further concentration of the market as evidenced by the take-over of two Community producers by the ICL Group from Israel. Moreover, there was a close-down of the French potash industry in 2001 because the mines were exhausted. It was argued by importers and users that this development led practically to a duopoly on the EU market, holding a combined market share in excess of 70%, in the EU-15 even in excess of 80%. Therefore, it was argued that the current measures have affected the market in a way that has impeded competition.
- (153) This argument has to be rejected, as the current measures have allowed the Community industry to maintain its operations and partially recover from the effects of injurious dumping. In absence of measures, it is likely that competition would have been reduced even more since the Community producers would have been forced to close down potash production. Therefore, the continuation of measures prevents a further reduction of competition by allowing the Community industry to survive and remain competitive.
- (154) Moreover, it is also recalled that the presence of a number of other competitors on the Community market from third countries, as well as from the countries concerned has ensured competition on the Community market and there is no reason to presume that this would change if measures are maintained.

6. Conclusion on Community interest

- (155) Having analysed the various interests involved, it is concluded that, on the one hand, a continuation of the anti-dumping measures is likely to result in a stable and predictable development for the Community potash market, which will allow the Community industry to further recover and remain competitive under fair conditions of competition. On the other hand, leaving the Community industry without adequate protection against the dumped imports would most probably wipe out its small profitability gained in recent years and lead to a serious deterioration of its situation. In fact, should the measures lapse, the Community industry would in all likelihood be forced to abandon the market step by step and a larger part of the market would be taken over by the Belarusian and Russian exporters, leaving an ever limited choice of sources of potash for importers, farmers and users in the Community. Therefore, the price advantage for importers, which would result from allowing the anti-dumping measures to lapse, is by far outweighed by the benefits to the Community industry resulting from the continuation of measures against the injurious dumping.
- (156) The disadvantage for users and end-users when measures are maintained is considered to be very limited compared to the outlook to gain a stable and viable Community industry. In fact, the prolongation of measures does not change any of the present market conditions, under which the users are not substantially affected. The likely

negative effects on the situation of the Community industry are outweighing the possible burden for users and end-users, which will not be different from the situation existing at present. It is therefore concluded that there are no compelling reasons against the prolongation of the existing anti-dumping measures.

F. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (157) In the framework of the interim review concerning imports of potash originating in Belarus, it was also examined whether the changed circumstances with respect to the original investigation regarding dumping could reasonably be considered to be of a lasting nature in accordance with Article 11(3) of the basic Regulation.
- (158) By comparing the normal values and export prices found between the previous and the current investigation it has been established that, account being taken of comparable product types, normal value has considerably increased, but the average export price has increased even higher, leading to decreased levels of dumping. As for the Belarusian export prices to other markets, they have been found to generally be in line with export prices to the EU market. No evidence was found that exports from Belarus would not continue to be made at dumped prices, yet at a lower level than in the past. Given the above, it is reasonably safe to conclude that the new lower level of dumping is of a lasting nature.
- (159) In view of all these factors, it is considered appropriate to amend the existing measures regarding Belarus, by lowering the dumping margin to that established in the present investigation.
- (160) According to Article 9(4) of the basic Regulation, the amount of the anti-dumping duty should not exceed the margin of dumping established, but it should be less than that margin if such lesser duty would be adequate to remove the injury of the Community industry. As the existing duties for Belarus had been calculated on the basis of the dumping margin, and as the new dumping margin is lower than the one previously calculated, the duty should be adjusted to the lower dumping margin found in this investigation, namely 27,5%.

H. UNDERTAKING

- (161) Following the disclosure of the definitive findings, the exporting producer in Belarus offered a price undertaking.
- (162) It is the normal practice of the Commission not to accept undertakings from companies not fulfilling the criteria for market economy treatment or individual treatment as undertakings from such companies is considered impractical. This notwithstanding, under particular circumstances, undertakings may be accepted from such companies. These circumstances would require, in particular, involvement from the State authorities in the exporting country in assuring that the conditions of the undertaking are respected.
- (163) A crucial factor in accepting any undertaking is that it has to satisfy the relationship of trust between the Community and the parties to the undertaking. In this regard, it should be recalled that the Council has imposed certain restrictive measures against President Lukashenko and certain officials of Belarus by Common Position

2006/276/CFSP¹² and Council Regulation (EC) No 765/2006¹³. It should also be recalled that Belaruskali is a fully State owned company and therefore the current authorities have a direct and decisive influence over the operations of the company. Therefore, as the Commission was not able to satisfy itself that there existed a relationship of trust between the Community and all the parties to the undertaking, it was concluded that the undertaking offer by Belaruskali was impracticable. Consequently, the offer was rejected.

G. PROPOSED DUTIES

(164) In view of the conclusions reached with regard to continuation of dumping, likelihood of recurrence of injury and Community interest, measures on imports from Belarus and Russia should be imposed in order to prevent a recurrence of injury being caused to the Community industry by the dumped imports.

1. Russia

(165) In view of the findings above and pursuant to Article 11(2) of the basic Regulation, the measures on imports of potassium chloride originating in Russia imposed by Council Regulation (EEC) No 3068/92, as last amended by Council Regulation (EC) No 1891/2005, should be maintained.

(166) Undertakings offered by the two Russian producers were accepted in the framework of the partial interim reviews that were concluded by Council Regulation (EC) No 1891/2005.

2. Belarus

(167) In view of the findings above and pursuant to Article 11(3) of the basic Regulation, the measures on imports of potassium chloride originating in Belarus should be modified. The existing measures for Belarus comprise of fixed amounts ranging from EUR 19,51/tonne to EUR 48,19/tonne, depending on the product type. During the current investigation period, however, it was found that all the exports to the Community by Belaruskali were limited to product types falling under two CN codes. Accordingly, in view of information on the other product types, and as the particular types of potash concerned appear to be the most commercialised, the most reasonable approach for implementing the amended duties is considered to be the replacement of all fixed amounts with an *ad valorem* duty or a minimum import price, based on the market conditions prevailing on the potash market during the IP.

(168) Since the dumping level found is lower than the injury margin established in the previous investigation, the *ad valorem* duty rate should be set at the dumping level which is 27,5%.

(169) In view of the special market conditions prevailing on the potash market, namely the increase of export prices of the product concerned between 2003 and the IP, increase which actually continued in 2005 and 2006, it was considered appropriate to impose measures in the form of a minimum import price (“MIP”) (i) based on the findings

¹² OJ L 101, 11.4.2006, p. 5.

¹³ OJ L 134, 20.5.2006, p. 1.

established for the investigation period, removing the effects of injurious dumping found for product types falling under CN codes 3104 20 50 (TARIC codes 3104 20 50 10 and 3104 20 50 90) and 3104 20 90 (TARIC code 3104 20 90 00) imported into the Community during the IP, which represented the most voluminous product types that are the likely to be imported into the Community also during the period covered by the extended measures, and (ii) in view of the risk of circumvention of the measure linked to the particular circumstances described in recital (163) above, up to a quantitative ceiling beyond which an *ad valorem* duty of 27,5% should apply. The same *ad valorem* duty should also apply to imports falling within the quantitative ceiling if the minimum import price is not respected or when the imports of the product subject to measures presented for release into free circulation fall under those CN codes, for which no minimum import price is applicable (i.e. CN codes 3104 20 10, ex 3105 20 10 (TARIC codes 3105 20 10 10 and 3105 20 10 20), ex 3105 20 90 (TARIC codes 3105 20 90 10 and 3105 20 90 20), ex 3105 60 90 (TARIC codes 3105 60 90 10 and 3105 60 90 20), ex 3105 90 91 (TARIC codes 3105 90 91 10 and 3105 90 91 20), ex 3105 90 99 (TARIC codes 3105 90 99 10 and 3105 90 99 20).) Consequently, a quantitative ceiling should be established by reference to the recent export performance during the year 2005 of the Belarusian exporter to the Community, as this is an export quantity that may be attainable by the exporter without having recourse to circumvention of the MIP. On this basis, a quantitative ceiling for the minimum import price should be established at 700 000 tonnes per year of goods released for free circulation.

- (170) In order to take into account the fact that the products are delivered on both DAF and CIF (Community port) terms (as defined in Incoterms 2000) and that the transportation, handling and loading costs included in the invoiced prices have significant differences depending on whether the transportation takes place by ground transportation to a land frontier of the Community (on DAF terms) or by maritime transport via seaports in third countries to a Community port (CIF (Community port) terms), the MIPs referring to these two delivery terms should be differentiated.
- (171) The Council acknowledges that the introduction of a quantitative ceiling requires a management system which cannot be put in place prior to the entry into force of this Regulation. In view of the complexity of this matter, the Council considers that it is appropriate for the Commission to set out by Regulation the modalities for implementing the management system of the quantitative ceiling as soon as it is technically possible.
- (172) The Council further acknowledges that in view of the fact that the Regulation changing the current form and level of the measure only enters into force in the second half of 2006, and that significantly increasing exports of the product concerned in the short term poses logistical difficulties, the risk of circumvention referred to in recital (169) in the short term is limited. Therefore, taken into account the technical difficulties referred to in recital (171) and in view of the limited risk of circumvention, it is considered appropriate not to impose a quantitative ceiling at this stage. Therefore, the MIPs and the *ad valorem* duty as explained in recital (169) above should apply from the date of entry into force of this Regulation.
- (173) However, should the quantity released into free circulation, as established by the Commission on the basis of data collected pursuant to Article 14(6) of the basic Regulation, in any given calendar year, or for the remaining part of the year 2006 on a

pro rata temporis basis, significantly exceed the 700 000 tonnes reflecting the traditional quantities as established in recital (169) above, and for the reasons referred to in that recital and with reference to the particular circumstances described in recital (163) above, the Commission should submit a proposal to the Council for the imposition of the *ad valorem* duty concerning all products falling under the product definition of this investigation.

- (174) To ensure the effective respect of the MIP, importers should be made aware that when it is found following a post-importation verification that (i) the net, free-at-Community-frontier price (i.e. net of customs duties and any post-importation costs, such as handling, loading and transportation costs) actually paid by the first independent customer in the Community (post-importation price) is below the net, free-at-Community-frontier price, before duty, as resulted from the customs declaration; and (ii) the post-importation price is lower than the MIP, the *ad valorem* duty shall apply retrospectively for the relevant transactions. Customs authorities should inform the Commission immediately whenever indications of a misdeclaration are found.
- (175) In this context, reference is made to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹⁴, *inter alia*, to Article 78, according to which the customs authorities may inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of potassium chloride falling within CN codes 3104 20 10, 3104 20 50, 3104 20 90 and on special mixtures (i.e. potassium chloride containing additional fertilising elements, with a potassium content evaluated as K₂O, by weight, equal to or exceeding 35% but not exceeding 62% on the dry anhydrous product) falling within CN codes ex 3105 20 10 (TARIC codes 3105 20 10 10 and 3105 20 10 20), ex 3105 20 90 (TARIC codes 3105 20 90 10 and 3105 20 90 20), ex 3105 60 90 (TARIC codes 3105 60 90 10 and 3105 60 90 20), ex 3105 90 91 (TARIC codes 3105 90 91 10 and 3105 90 91 20), ex 3105 90 99 (TARIC codes 3105 90 99 10 and 3105 90 99 20), originating in Belarus and Russia.

Article 2

1. The rate of the anti-dumping duty applicable to the net, free-at-Community frontier price, before duty, of the product described in Article 1 and originating in Belarus shall be 27,5%. It shall be applied under the conditions set out below:

¹⁴ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 13).

- (a) The duty shall be levied on products falling under CN codes 3104 20 50 and 3104 20 90 (TARIC additional code A999) except when

- the net, free-at-Community frontier price, before duty, of the product is at or above the appropriate minimum import price set out in Annex I and

- the total imported quantity of the products specified in Annex I and released into free circulation has not cumulatively reached 700.000 tonnes.

The Commission shall establish the modalities for implementing the management system of this quantitative ceiling by Regulation as soon as possible.

- b) The duty shall be levied on products falling under CN codes 3104 20 10, ex 3105 20 10 (TARIC codes 3105 20 10 10 and 3105 20 10 20), ex 3105 20 90 (TARIC codes 3105 20 90 10 and 3105 20 90 20), ex 3105 60 90 (TARIC codes 3105 60 90 10 and 3105 60 90 20), ex 3105 90 91 (TARIC codes 3105 90 91 10 and 3105 90 91 20), ex 3105 90 99 (TARIC codes 3105 90 99 10 and 3105 90 99 20).

2. By derogation to Article 2(1), until the entry into force of the Commission Regulation cited in paragraph 1, the duty shall apply as follows:

- a) The duty shall be levied on products falling under CN codes 3104 20 50 and 3104 20 90 (TARIC additional code A999) except when the net, free-at-Community frontier price, before duty, of the product is at or above the appropriate minimum import price set out in Annex I.

- b) The duty shall be levied on products falling under CN codes 3104 20 10, ex 3105 20 10 (TARIC codes 3105 20 10 10 and 3105 20 10 20), ex 3105 20 90 (TARIC codes 3105 20 90 10 and 3105 20 90 20), ex 3105 60 90 (TARIC codes 3105 60 90 10 and 3105 60 90 20), ex 3105 90 91 (TARIC codes 3105 90 91 10 and 3105 90 91 20), ex 3105 90 99 (TARIC codes 3105 90 99 10 and 3105 90 99 20).

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

Article 3

1. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the product described in Article 1, originating in the Russian Federation and manufactured by the companies listed below shall be as follows:

Country	Company	Duty Rate	Taric Additional Code
Russia	JSC Silvinit, Solikamsk	23,0%	A665
	JSC Uralkali, Berezniki	12,3%	A666

2. The rate of the anti-dumping duty applicable to the net, free-at-Community frontier price, before duty, of the product described in Article 1, originating in the Russian Federation and manufactured by all other companies than those mentioned in paragraph 1 (TARIC additional code A999) shall be equal to the fixed amount in euro per tonne of KCl shown below per category and grade (standard potash is to be understood as potash in powder form):

Potassium chloride not containing any additional fertilising elements:

Category:	With a potassium content evaluated as K ₂ O, by weight, not exceeding 40% on the dry anhydrous product		With a potassium content evaluated as K ₂ O, by weight, exceeding 40% but not exceeding 62% on the dry anhydrous product		With a potassium content evaluated as K ₂ O, by weight, exceeding 62% on the dry anhydrous product
Grade	Standard	Other than standard (including granular)	Standard	Other than standard (including granular)	
TARIC code	3104 20 10 10	3104 20 10 90	3104 20 50 10	3104 20 50 90	3104 20 90 00
Fixed amount (EUR/tonne)	19,61	26,01	29,65	39,33	40,63

Potassium chloride containing additional fertilising elements in special mixtures:

	With a potassium content evaluated as K ₂ O, by weight, equal to or exceeding 35% but not exceeding 40% on the dry anhydrous product	With a potassium content evaluated as K ₂ O, by weight, exceeding 40% but equal to or not exceeding 62% on the dry anhydrous product
TARIC code	3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10	3105 20 10 20, 3105 20 90 20, 3105 60 90 20, 3105 90 91 20, 3105 90 99 20
Fixed amount (EUR/tonne)	26,01	39,33

3. Notwithstanding Article 1 above, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 4.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 4

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in Commission Decision 2005/802/EC, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Decision.
2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:
 - (a) the goods declared and presented to customs correspond precisely to the product described in Article 1;
 - (b) a commercial invoice containing at least the elements listed in Annex II is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and
 - (c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.

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,

For the Council
The President

ANNEX I

TARIC Code	Minimum Import Price ('MIP') in euro per tonne, <i>CIF (Community port) (*)</i> , net, free-at-Community frontier, before duty, for goods delivered by maritime transportation via third country sea ports	Minimum Import Price ('MIP') in euro per tonne, <i>DAF(*)</i> , net, free-at-Community frontier, before duty, for goods delivered by ground transportation
3104 20 50 10	114.3 (TARIC additional code A747)	102.4 (TARIC additional code A748)
3104 20 50 90	125.8(TARIC additional code A749)	113.0(TARIC additional code A750)
3104 20 90 00	124.1(TARIC additional code A751)	110.3(TARIC additional code A752)

*) as defined in *Incoterms 2000*

ANNEX II

The following elements shall be indicated on the commercial invoice accompanying the company's sales of potassium chloride to the Community which are subject to an Undertaking:

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".
2. The name of the company mentioned in Article 1 of Commission Decision 2005/802/EC issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
 - Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN 1, PCN 2, etc),
 - plain language description of the goods corresponding to the PCN concerned,
 - company product code number (CPC) (if applicable),
 - CN code,
 - quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the invoice and the following signed declaration:

“I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Decision 2005/802/EC. I declare that the information provided in this invoice is complete and correct.”