

**COMMISSION REGULATION (EC) No 1629/2000**

**of 25 July 2000**

**imposing a provisional anti-dumping duty on imports of ammonium nitrate originating in Poland and Ukraine**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, as last amended by Regulation (EC) No 905/98 <sup>(2)</sup>, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE**

- (1) On 29 October 1999, the Commission announced, by a notice published in the *Official Journal of the European Communities* <sup>(3)</sup> (the 'notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Community of ammonium nitrate (AN), originating in Lithuania, Poland and Ukraine.
- (2) The proceeding was initiated following a complaint lodged by the European Fertiliser Manufacturers Association (EFMA) on behalf of companies representing a major proportion of total Community production. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The Commission officially advised the complainant Community producers, exporting producers and importers, suppliers and users known to be concerned, as well as associations concerned and representatives of the exporting countries, and the EU-Lithuania and EU-Poland Association Councils of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) The Commission sent questionnaires to all parties known to be concerned. Replies were received from ten complainant Community producers, five exporting producers, one exporter, one importers' association and seven importers in the Community (of which three are related to the exporters).
- (5) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, injury and the Community interest and carried

out verifications at the premises of the following companies:

(a) *Complainant Community producers*

1. BASF AG, Limburgerhof, Germany
2. Fertiberia SA, Madrid, Spain
3. Grande Paroisse SA, Paris, France
4. Hydro Agri France, Nanterre, France
5. Hydro Agri UK Ltd, Immingham, United Kingdom
6. Hydro Agri Sluiskil BV, Sluiskil, the Netherlands
7. Kemira Ince Ltd, Chester, United Kingdom
8. Kemira SA, Wavre, Belgium
9. Sefanitro SA, Barakaldo, Spain
10. Terra Nitrogen (UK) Ltd, Stockton on Tees, United Kingdom

(b) *Exporters/exporting producers from the countries concerned*

1. JSC Achema, Jonava, Lithuania
2. Anwil SA, Wloclawek, Poland
3. CIECH SA, Warsaw, Poland
4. Zaklady Azotowe Pulawy SA, Pulawy, Poland

(c) *Importers*

(a) *related to exporting producers*

1. Litfert SARL, St Malo, France
2. Scandinavian Chemicals and Fertilisers AB, Malmö, Sweden
3. Daltrade Ltd, London, United Kingdom

(b) *unrelated to exporting producers*

1. Helm Düngemittel GmbH, Hamburg, Germany
2. UNCAA, Paris, France

- (6) The investigation of dumping and injury covered the period from 1 April 1998 to 30 September 1999 ('the investigation period' or 'IP'). This period is longer than one year in order to cover two agricultural seasons and thereby obtain a more representative picture of the market, and in order to include possible changes in the market that occurred after the imposition of a specific duty in 1998, reinforcing the anti-dumping measures concerning imports of AN originating in Russia which had been imposed in 1995. The examination of trends relevant for the injury assessment covered the period from 1995 to the end of the IP.

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

<sup>(2)</sup> OJ L 128, 30.4.1998, p. 18.

<sup>(3)</sup> OJ C 311, 29.10.1999, p. 3.

**B. PRODUCT CONCERNED AND LIKE PRODUCT****1. Product concerned**

- (7) The product concerned is ammonium nitrate, a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid and the nitrogen content exceeds 28 % by weight. The product imported into the Community is usually sold in bags of 50 kg and 500 kg. The product concerned falls within CN codes 3102 30 90 (ammonium nitrate other than in aqueous solutions) and 3102 40 90 (mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight).

**2. Like product**

- (8) Ammonium nitrate is a pure commodity product and its chemical characteristics are comparable whatever the country of origin. There are two different types of ammonium nitrate: granular and prilled. Granular ammonium nitrate has a larger diameter and therefore has better spreading characteristics. The investigation has shown that all imports are prilled and that the majority of ammonium nitrate produced by the Community industry is granular. However, since granular and prilled ammonium nitrate have the same chemical characteristics and end use, and are perceived by users as being interchangeable, they are to be regarded as two different types of the same product.

Therefore, the product produced in the Community has been found to be a like product to that imported from the countries concerned, in accordance with Article 1(4) of Regulation (EC) No 384/96 (the Basic Regulation). Furthermore, the product exported to the Community from the countries concerned and those manufactured and sold on the respective Polish and Lithuanian markets are considered to be alike.

**C. DUMPING****1. Lithuania***(a) Normal value*

- (9) The sole Lithuanian producer of AN cooperated with the investigation. It sold only one type of AN (i.e. prilled). Domestic sales were representative during the IP because they accounted for more than 5 % of export sales (Article 2(2) of the Basic Regulation).
- (10) More than 20 % of domestic sales of the product concerned were made at prices below unit manufacturing costs (fixed and variable) plus selling, general and administrative costs. Such domestic sales at a loss were treated, in accordance with Article 2(4) of the Basic Regulation, as not being in the ordinary course of trade. Normal value was therefore determined on the basis of

the weighted average prices of all sales that were not loss-making, because these remaining sales accounted for more than 10 % of all domestic sales.

*(b) Export price*

- (11) For those sales made to independent customers in the Community, the export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community, in accordance with Article 2(8) of the Basic Regulation. For sales made via related importers, the export price was constructed on the basis of resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by these importers and for the profit margin found in the investigation to have been attained by independent importers of the product concerned, in accordance with Article 2(9) of the Basic Regulation.

*(c) Comparison*

- (12) The normal value and export price were compared on an ex-works basis. For that purpose, adjustments were made for differences in transport, insurance, loading and ancillary costs, as provided for in Article 2(10) of the Basic Regulation.

*(d) Dumping margin*

- (13) In accordance with Articles 2(11) and (12) of the Basic Regulation, the dumping margin for the exporting producer concerned was established on the basis of a comparison of the weighted average normal value with the weighted average export price. The comparison showed that no dumping existed for exports of AN made by the company during the IP. The provisional dumping margin therefore is 0,0 %.

Since the sole cooperating Lithuanian producer accounted for all Lithuanian exports of the product concerned to the Community, the dumping margin provisionally established for this company is valid for the whole country.

**2. Poland***(a) Cooperation*

- (14) The Commission sent questionnaires to five companies (one exporter and four exporting producers) mentioned in the complaint. One exporter and two exporting producers replied within the specified time limit, a third exporting producer declined to cooperate and a fourth did not reply. However, on the basis of Eurostat import data it was established that the cooperating exporting producers accounted for more than 90 % of total imports originating in Poland.

(b) *Normal value*

(15) Both cooperating exporting producers sold only one type of AN (i.e. prilled). Domestic sales of both companies during the IP were representative because they accounted for more than 5 % of their respective export sales (Article 2(2) of the Basic Regulation).

(16) More than 20 % of domestic sales of the product concerned were made by the two producers at prices below unit manufacturing costs (fixed and variable) plus selling, general and administrative costs. Such domestic sales at a loss were treated, in accordance with Article 2(4) of the Basic Regulation, as not being in the ordinary course of trade. Normal value for both producers was therefore determined on the basis of the weighted average prices of all sales that were not loss-making, because these remaining sales accounted for more than 10 % of all domestic sales.

(c) *Export price*

(17) One of the Polish producers sold AN for export to the Community via two sales routes:

- directly, to independent importers in the Community, and
- indirectly, via an exporter located in Poland.

For both direct and indirect exports, the export price was established on the basis of the prices actually paid or payable for the product when sold for export from Poland to the Community.

(18) The second Polish producer only sold AN to independent importers in the Community. The export price was therefore established on the basis of the prices actually paid or payable, in accordance with Article 2(8) of the Basic Regulation.

(d) *Comparison*

(19) The normal value and the export price were compared on an ex-works basis. For that purpose, adjustments were made for differences in commissions, transport, insurance, loading and ancillary costs, as provided for in Article 2(10) of the Basic Regulation.

(e) *Dumping margin*

(20) In accordance with Articles 2(11) and (12) of the Basic Regulation, the dumping margin for each of the two exporting producers concerned was established on the basis of a comparison of the weighted average normal value with the weighted average export price.

The weighted average dumping margins provisionally determined for the two cooperating exporting producers, expressed as a percentage of the cif Community frontier price, are set out below:

— Anwil SA	32,9 %
— Zakłady Azotowe Pulawy SA	25,4 %

For those exporting producers which failed to reply to the Commission's questionnaire or did not otherwise make themselves known, dumping was determined on the basis of the facts available in accordance with Article 18 of the Basic Regulation. In view of the existence of at least one non-cooperating exporting producer, a residual dumping margin was calculated, based on the highest dumping margin established for representative transactions by one cooperating exporting producer in Poland. This was done in order not to reward non-cooperation and in order to avoid circumvention.

The residual dumping margin determined for Poland, expressed as a percentage of the cif Community frontier price, is 43,4 %.

### 3. Ukraine

(a) *Cooperation*

(21) The Commission sent questionnaires to the five companies mentioned in the complaint. Two replied to the questionnaire within the time limit stating that they had not exported to the Community at all during the IP. One replied outside the specified time limit and was informed that it would be treated as a non-cooperating party. No reply was received from the remaining two companies.

(b) *Analogue country*

(22) Pursuant to Article 2(7)(a) of the Basic Regulation, normal value for Ukraine had to be established on the basis of the price or constructed value in a market economy third country. In the notice of initiation, Poland was proposed as a suitable analogue country.

No comments were received from any interested party. Moreover, the investigation showed that:

- there was a substantial domestic market in Poland for the product concerned, which is representative as compared to the exports of AN to the Community originating in Ukraine,
- there were at least two (cooperating) domestic producers of a significant size,
- there were significant imports into Poland of AN from third countries,
- the accounting data supplied by the cooperating companies was reliable.

In view of the above, the Commission provisionally concluded that Poland would be a reasonable choice of market economy third country, in accordance with Article 2(7)(a) of the Basic Regulation.

(c) *Normal value*

- (23) Normal value was established on the basis of the weighted average of the normal value established for the two cooperating exporting producers in Poland. For the explanation of how normal value was determined, see recitals (15) and (16) above.

(d) *Export price*

- (24) In the absence of information from the exporters, the provisional findings have been established on the basis of the facts available, in this case Eurostat figures and the information on sea freight costs contained in the complaint, in accordance with Article 18 of the Basic Regulation.

(e) *Comparison*

- (25) The normal value and the export price were compared on a fob (ex-exporting country frontier) basis. For that purpose, adjustments were made for differences in transport, insurance, loading and ancillary costs, in accordance with Article 2(10) of the Basic Regulation.

(f) *Dumping margin*

- (26) In accordance with Articles 2(11) and (12) 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. Expressed as a percentage of the cif Community frontier price, the provisional countrywide dumping margin for Ukraine is 67,4 %.

**D. INJURY**

- (27) The overall situation of the Community industry followed an upward trend between 1995 and 1996, but it started to deteriorate heavily thereafter. This development should be seen in the light of the effects of the anti-dumping measures introduced concerning imports of AN originating in Russia, which were put into place in August 1995 (minimum import price) and reinforced in March 1998 (specific duty of ECU 26,3/tonne).

**1. Definition of the Community industry**

- (28) Of the 11 complainant Community producers two were considered to be not cooperating due to the fact that the information submitted was insufficient. These producers were therefore not regarded as being part of the Community industry. The nine cooperating Community producers represent more than 85 % of the Community production of AN and therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the Basic Regulation.

**2. Community consumption**

- (29) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, sales of the remaining Community producers on the Community market as contained in the complaint, information provided by the cooperating exporting producers and Eurostat import figures concerning the volume of imports.

On this basis, Community consumption decreased by 16,7 % between 1995 and the IP, and even more sharply between 1996 and the IP. Between 1998 and the IP it also went down significantly, but this has to be seen in the light of the fact that the data for the IP are annualised and that the AN market is characterised by a distinct seasonal pattern.

**3. Imports from the countries concerned<sup>(1)</sup>**(a) *Cumulative assessment of the effects of the imports concerned*

- (30) It has firstly been examined whether imports from all countries concerned should be assessed cumulatively, taking into account Article 3(4) of the Basic Regulation. In this respect, given the above findings concerning dumping of imports originating in Lithuania, these imports were not taken into consideration for the purpose of the injury and causality assessment as imports from the countries concerned, but have been assessed in the context of imports from other third countries. As to Poland and Ukraine, the dumping margins found are more than *de minimis*, volumes of imports are not negligible and the cumulative assessment was also considered appropriate in view of the similar conditions of competition both between the imported products and between the imported products and the like Community product. This is evidenced by the fact that the import volumes were substantial and that their market shares have increased steadily as from 1995. Moreover, their prices have considerably decreased since 1996. All exporting producers, additionally, undercut the sales prices of the Community industry, while using the same or similar channels of trade. For these reasons, it is provisionally concluded that imports originating in Poland and Ukraine should be assessed cumulatively.

(b) *Volume and market share of dumped imports<sup>(2)</sup>*

- (31) The import volume of AN originating in the two countries concerned increased between 1995 and 1996. In 1997 it fell back to the 1995 level. Thereafter it increased again sharply. In the IP it was 176,5 % higher than in 1995, while Community consumption decreased by 16,7 % during the same period. The market share of the imports from the two countries concerned increased from 2,6 % in 1995 to 3,1 % in 1996, then fell back to the 1995 level in 1997 and subsequently increased sharply to 8,7 % in the IP. Compared to 1995 this was an increase of 235 %.

<sup>(1)</sup> For confidentiality reasons, given that in some of the countries concerned there is only one exporting producer, the figures contained in this Regulation relating to them will be indexed or only given approximately.

<sup>(2)</sup> For the assessment of trends in volumes and market shares and in order to compare consistent data, only Eurostat data were used.

(c) *Prices of dumped imports*(i) *Price evolution* <sup>(1)</sup>

- (32) The weighted average import prices of imports originating in the two countries concerned decreased by 23,9 % between 1995 and the IP. More specifically, while prices reached a peak in 1996, they decreased significantly throughout the period thereafter, by 31,4 %.

(ii) *Undercutting*

- (33) It was examined whether the exporting producers in the countries concerned undercut the prices of the Community industry during the IP. For this analysis, the cif prices of the exporting producers have been duly adjusted to a Community frontier ex quay custom duty paid level (DEQ) and compared, at the same level of trade, to Community producer's ex-works prices, both for bagged products. This was done as imports were always bagged, whereas the Community industry sold its products both in bagged and in bulk form. Thus, adjustments were made where appropriate.

In addition, the investigation has shown that granular products were on average sold at a higher price than prilled products, i.a. due to different spreading properties. Therefore, an allowance of EUR 5,8 per tonne was made for the undercutting calculations. This amount is the average price difference between granular and prilled AN sold by the Community industry during the investigation period.

Finally, in order to assess the level of price undercutting found it should be noted that the prices of the Community industry were found to be depressed during the IP as shown in recital 36 below.

The undercutting margins found on this basis per country, expressed as a percentage of the Community producers' prices, are as follows:

Country	Undercutting
Poland	2,1 %
Ukraine	12,5 %

#### 4. Situation of the Community industry

(a) *Production*

- (34) The Community industry's production decreased by 4,7 % between 1995 and the IP, i.e. from 3 915 000 tonnes to 3 730 000 tonnes. A significant increase took place between 1995 and 1996. Thereafter, production decreased by 20,9 % between 1996 and the IP.

<sup>(1)</sup> In order to assess price trends and in order to compare coherent data, only Eurostat data were used, whereas for the calculation of price undercutting and injury margins during the IP, information provided by exporting producers was used where available.

(b) *Capacity and capacity utilisation rates*

- (35) It should be noted that capacity and capacity utilisation were not found to be meaningful indicators for this type of production since the development of these indicators was affected by the fact that also other products are produced on the same production equipment. Indeed, based on natural gas transformed into ammonia, various different products may be produced using the same production lines. The total production capacity of the Community industry was, except for 1996, by and large stable over the period under consideration. Capacity utilisation increased from 46 % in 1995 to 56 % in 1996 and subsequently fell back to slightly below the 1995 level in the IP.

(c) *Sales in the Community*

- (36) The sales volume of the Community industry decreased from 3 790 000 tonnes in 1995 to 3 396 000 tonnes in the IP, i.e. by 10,4 %. It should be noted that throughout the period between 1996 and the IP, they decreased by 19,9 %.

(d) *Market share*

- (37) The market share of the Community industry was stable between 1995 and 1997 and then increased. In the IP it was 71,9 % compared to 66,8 % in 1995. While overall consumption decreased since 1996, the Community industry and, to a much larger extent, the countries concerned were able to increase their market share. This development occurred at a time when antidumping measures were imposed on imports originating in Russia.

(e) *Prices of the Community industry*

- (38) The average net sales price of the Community industry decreased from ECU 120,5/tonne in 1995 to ECU 99,3/tonne in the IP, i.e. by 17,6 %. The fall was particularly marked between 1996 and the IP where the prices steadily decreased by 25,4 %.

(f) *Profitability*

- (39) The weighted average profitability of the Community industry deteriorated by 22 percentage points between 1995 and the IP, from 9,6 % to (-12,4 %). In parallel with the price development, the profitability was highest in 1996 and decreased steadily between that year and the IP, by 31 percentage points.

(g) *Employment*

- (40) Employment of the Community industry, while increasing between 1995 and 1996, decreased thereafter from 1 986 employees to 1 693 employees in the IP, a decrease of 14,8 %.

(h) *Investment*

- (41) The Community industry increased its investments between 1995 and the IP. These investments include investments relating to production steps preceding the actual production of AN and are therefore not directly related to the product concerned. The most important investments between 1995 and the IP were investments in production facilities for nitric acid, which is a raw material for the production of AN, but which may also be used for other purposes such as the production of UAN solutions.

## 5. Conclusion on injury

- (42) A deterioration of the situation of the Community industry has been found by reference to the period considered. While the antidumping measures on imports of AN originating in Russia led to a substantial decrease of these imports after 1996 with, at first, an improvement of its overall situation, the Community industry could subsequently not fully benefit from this development. Although it was able to take over roughly half the market share lost by Russia since 1997, the countries concerned took over the other half. Moreover, while sales of the Community industry decreased by 19,9 % between 1996 and the IP, imports originating in the countries concerned increased by 111 % during the same period. In addition, the investigation has shown that during the IP the imports concerned were made at prices undercutting those of the Community industry.

In terms of price development, the Community industry managed to increase its average prices between 1995 and 1996. However, its sales prices were depressed considerably thereafter. This had a significant negative impact on its profitability, which substantially deteriorated as from 1996 to reach a level of - 12,4 % during the IP.

The situation of the Community industry is thus found to have deteriorated to such an extent that it is provisionally concluded that the Community industry has suffered material injury in the IP.

## F. CAUSATION

### 1. Introduction

- (43) Pursuant to Article 3(6) and (7) of the Basic Regulation, the Commission, in order to reach its conclusions on the causal link between the dumped imports and the injury suffered by the Community industry, examined the impact of all known factors and their consequences on the situation in that industry. Such analysis ensured that

any injury caused by factors other than dumped imports was not attributed to the dumped imports.

## 2. Effect of the dumped imports

- (44) AN is a commodity product with no significant difference in technical, physical and chemical characteristics and applications between the imported product and the one produced in the Community. Therefore, AN produced in the Community and AN imported from the countries concerned are in direct competition with each other mainly on the basis of the price, and this in a transparent and highly price sensitive market.
- (45) Between 1995 and the IP, imports from the countries concerned significantly increased in terms of volume (175 %) and market share (from 2,6 % to 8,7 %) and they undercut and depressed the prices of the Community industry. From 1996, this coincided with the deterioration of the situation of the Community industry in terms of sales and price reductions as well as deteriorating profitability.

In August 1995, the Council imposed definitive measures (minimum import price based variable duty) on imports of AN originating in Russia. After an investigation of the possible absorption of the measures, the variable duty was replaced by a specific duty of ECU 26,3/tonne in March 1998. The dumped imports from the countries concerned prevented the Community industry from benefiting from the anti-dumping measures imposed on imports from Russia. In terms of volume, the countries concerned took over half of the market share held previously by Russia while the Community industry gained market share only to a limited extent and its sales declined in absolute terms. Furthermore, the significant increase of the market share of the dumped imports between 1996 and the IP coincided with the downward trend in the situation of the Community industry, in particular in terms of prices and profits.

When faced with low-priced imports originating in the countries concerned, the Community industry had the possibility of either maintaining its prices with a risk of losing market share, or following the low prices of dumped imports. Both options would have had negative consequences on profitability. Indeed, as from 1997, the Community industry substantially lowered its sales prices. This had a detrimental impact on its profitability, which turned negative in 1998. This clearly illustrates the price sensitivity of the market and the important impact of the prices practised by the exporting producers of the countries concerned.

### 3. Effect of other factors

#### (a) Imports from other third countries

- (46) As the dumping margin for imports originating in Lithuania was found to be *de minimis*, these imports were considered as 'imports from other third countries'.

The import volume of AN from other third countries decreased from about 1 636 000 tonnes in 1995 to around 720 000 tonnes in the IP, i.e. by 56 %. The most important suppliers in this group of countries during the IP were Russia, Lithuania, Bulgaria and Egypt. The market share of the imports from third countries decreased from 28,8 % in 1995 to 15,2 % in the IP, i.e. a decrease of 13,6 percentage points. This decrease is to a large extent made up by the reduction of imports originating in Russia, even though the market share of imports originating in Lithuania showed another trend, going up from 3,2 % in 1995 to 5,4 % in 1997 and subsequently falling to 4,5 % in the IP.

Given the overall decrease in terms of volumes and market shares of the imports originating in other third countries, these imports overall cannot have contributed in a significant manner to the material injury suffered by the Community industry although it cannot be excluded that imports from individual countries have contributed to the injury suffered by the Community industry.

#### (b) Decrease in apparent consumption

- (47) As to the development of demand, apparent consumption of AN fell by 950 000 tonnes between 1995 and the (annualised) IP, i.e. by 16,7 %.

The fall was particularly marked between 1998 and the annualised IP. As stated above, the AN market is characterised by a distinct seasonal pattern. The major part of the sales take place between October and March of each year (high season), while during the rest of the year demand is relatively subdued (low season). As the investigation period of 18 months contains two low seasons and only one high season, the annualised apparent consumption would be understated.

In addition, it cannot be excluded that the decrease in demand (even if statistically overstated in the IP) is the consequence of certain substitution effects amongst different nitrogen fertilisers. It has been established in a recent case concerning UAN solutions that apparent consumption of UAN solutions increased in recent years (see Commission Regulation (EC) No 617/2000<sup>(1)</sup>). This trend continued in the second half of 1999.

However, while the decline in demand certainly contributed to increased competition and exerted a certain downward pressure on prices, thereby contributing to the injury suffered by the Community industry, the latter did anticipate a fall in demand and is adapting to it,

which may be seen in the recent announcement of different plant closures. Also, in the absence of the price pressure from the dumped imports the decline in prices and profitability of the Community industry would have been much less marked.

#### (c) Further factors

- (48) It was also examined whether factors other than the abovementioned might have contributed to the injury suffered by the Community industry.

As to the development of supply, it has been argued that there is a worldwide overcapacity for nitrogen fertilisers which contributed to a fall in the prices of nitrogen fertilisers, thereby causing the injury suffered by the Community industry. However, the Community industry did not build up additional capacity during the period under investigation and did thus not contribute to any increase in worldwide overcapacity. As far as worldwide over-capacity is concerned this may well be the reason why the countries concerned exported to the Community, but this does not justify injurious dumping.

As to the development of unit production costs of the Community industry, they were relatively stable between 1995 and the IP and did therefore not have an influence on profitability.

In relation to the developments in technology and productivity of the Community industry, it has been established that the Community industry has carried out considerable investments in order not to lose competitiveness.

### 4. Conclusion on causation

- (49) In view of the above, it is provisionally concluded that while the decline in apparent consumption or certain third country imports certainly may have contributed to the injury suffered by the Community industry, in particular in terms of a reduction in production and sales volume, the dumped imports remain a significant factor especially as far as the price and profit development of the Community industry is concerned. In view of the coincidence in time between, on the one hand, the price decrease and undercutting established for the imports concerned, the significant market share gained by the dumped imports originating in the countries concerned and, on the other hand, the decline in sales suffered by the Community industry, as well as the reduction of its sales prices and the decline of its profitability, it is provisionally concluded that the dumped imports originating in the countries concerned have caused the material injury suffered by the Community industry. Thus, it was also concluded that the effect of factors other than the dumped imports were not such as to break the causal link between the dumped imports and the material injury suffered by the Community industry therefrom.

<sup>(1)</sup> OJ L 75, 24.3.2000, p. 3.

## G. COMMUNITY INTEREST

### 1. Preliminary remark

- (50) In accordance with Article 21 of the Basic Regulation, it was examined whether the imposition of anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers and traders and the users of the product concerned to the extent that the relevant parties submitted the information requested in this respect.

In order to assess the likely impact of the imposition or non-imposition of measures, information was requested from all interested parties. Questionnaires were sent to the Community industry, two other producers in the Community, 51 importers/traders, one importers' association and two associations of users of the product concerned. Five importers/traders (of which one related to an exporting producer) as well as the importers' association replied. As to the users' associations, none of them replied to the questionnaires or submitted any other information.

On this basis it was examined, whether, despite the conclusions on dumping, on the situation of the Community industry and on causation, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to impose measures in this particular case.

### 2. Interest of the Community industry

- (51) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This has been shown in particular by the positive development of its situation at a time when effective competition had been restored after the imposition of anti-dumping measures concerning imports originating in Russia and by the industry's investment in state of the art production capacity. However, due to the pressure of the dumped imports on sales prices, it did not fully benefit from the imposition of anti-dumping measures on imports originating in Russia in particular since 1996.

One group of complainant companies has already announced the planned shutdown of approximately 1 million metric tonnes of nitrate capacity so far used to produce, *inter alia*, AN with corresponding job losses. Despite the structurally viable background mentioned above, it cannot be excluded that some companies in this industry would reduce further or even cease their manufacturing activities for the product concerned in

the Community if no measures against injurious dumping were taken. This conclusion is justified in view of the duration and extent of financial losses suffered due to dumped imports (between 1998 and the IP, the Community industry has suffered increasing losses). Indeed, without measures, the price-depressing effect of the dumped imports will continue to frustrate all efforts of the Community industry to regain a satisfactory margin of profit.

On the other hand, the imposition of measures would enable this industry to restore and maintain its activities in the Community.

### 3. Interest of importers/traders

- (52) Questionnaires and information were received from the European Fertiliser Import Association (EFIA) and four unrelated importers and two verification visits were carried out. Furthermore, the investigation has established that importers/traders as a rule do not only trade in AN but also, to a significant percentage, in other fertilisers. Thus, the effect of measures on their overall business would be limited. Nevertheless, it cannot be excluded that some importers would face negative consequences after the imposition of anti-dumping measures.

### 4. Interest of users

- (53) Users of the product concerned are farmers in the Community. Demand for nitrogen fertilisers appears to be relatively inelastic and farmers tend to buy from the cheapest source available. Farmers therefore have benefited from low prices for AN in the 1998 and 1999 seasons. However, the fact that there has been no co-operation from user associations justifies the provisional conclusion that anti-dumping measures, if any, will most likely not have a decisive impact on users. In the event of any anti-dumping measures being imposed, the cost of AN for farmers would very probably increase. However, fertilisers represent a small part of total production costs so that the possible negative effects on farmers in the Community are not considered to offset the positive effect of measures against injurious dumping for the Community industry.

### 5. Competition and trade distorting effects

- (54) With respect to the effects of possible measures on competition in the Community, some interested parties have argued that duties would lead to the disappearance of the exporting producers concerned from the Community market, thus considerably weakening competition, and to an increase of the prices for AN.

However, some of the exporting producers concerned will probably continue to sell their products albeit at non-injurious/non-dumped prices, as they were found to have an increasingly strong market position. The imposition of anti-dumping duties on those exporting producers for which higher dumping and injury margins were established is likely to lead to a drop in their sales volume and market share. Finally, it cannot be excluded that once prices reach a level at which the effects of injurious dumping are removed, imports from other third countries will also be reoriented towards the Community market. Therefore, it is likely that the Community industry will still have a significant number of competitors on the market and, as stated above, in view of the large number of producers in the Community, as well as the transparency of the market, users will continue to have the choice of different suppliers of the product concerned.

Thus, the imposition of anti-dumping duties is considered not to unduly limit the choice for users or weaken competition.

## 6. Conclusion on Community interest

- (55) Given the above reasons, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties.

## H. PROVISIONAL MEASURES

### 1. Injury elimination level

- (56) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

For establishing the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.

In order to establish the level of duty necessary to eliminate the injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of a comparison, at the same level of trade, of the weighted average import price, with the non-injurious price of AN sold by the Community industry on the Community market.

The non-injurious price has been obtained by adding to the full unit cost of production a profit margin that may reasonably be reached in the absence of injurious dumping, taking account of the allowance with respect to the difference between granular and prilled AN already made for the undercutting calculations. The profit margin used for this calculation is 8 %.

The complainant had submitted that a profit margin of 10 to 15 % would be appropriate. It argued that in 1995 and in 1996 the Community industry had achieved profits of 9,6 % and 18,6 % respectively, and that there was a need to replace investment in the long term and to achieve an adequate return on equity for shareholders.

After consideration of the various submissions by the complainants on that issue, the provisional conclusion was reached that a profit margin of 8 % would provide the Community industry with a profitability level that it could have reasonably expected in the IP in the absence of the dumped imports. In this respect, the profit achieved in 1995 can be considered to represent a profit made in the absence of injurious dumping, as this is a year in which the Community industry could benefit from the effect of measures imposed on dumped imports of AN in Russia, albeit in an expanding market. The year 1996 was a year in which the upward profitable trend was confirmed, albeit with demand expanding even more, leading to an exceptionally good market situation with excellent results for all economic operators. As opposed to the 1995/1996 situation, the market was in a depressed state during the IP. In determining the profit that could reasonably, during the IP, have been achieved in the absence of injurious dumping, account was thus taken of the past situation experienced by the Community industry, but also of the overall market situation in the IP, leading to the conclusion that 8 % could be considered an appropriate non-injurious profit margin.

The difference resulting from the comparison between the weighted average import price and the non-injurious price of the Community industry was then expressed as a percentage of the total cif import value.

### 2. Provisional measures

- (57) The complainant submitted that there were indications of the emergence of new forms of AN, i.e. mixtures of AN with other products, whose only purpose is to circumvent possible anti-dumping measures concerning AN. The attention of the customs authorities is drawn to this issue.

In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the Basic Regulation, a provisional anti-dumping duty should be imposed in respect of imports originating in Poland and Ukraine at the level of the injury margins found since these are lower than the dumping margins.

In order to ensure the efficiency of the measures and to discourage the price manipulation which has been observed in some previous proceedings involving the same general category of product, i.e. fertilisers, it is considered appropriate to impose the duties in the form of a specific amount per tonne.

As regards the basis for the residual duty to be applied to the non-cooperating exporting producers, the highest margins established for representative transactions by one cooperating producer were used.

On the basis of the above, the provisional duty amounts are as follows:

Country	Dumping margin %	Basis for AD duty %	Amount of duty (EUR/tonne)
POLAND			
Anwil SA	32,9	25,2	23,13
Zakłady Azotowe Pulawy SA	25,4	24,5	22,61
All other companies	43,4	30,5	26,91
UKRAINE	67,4	43,4	33,25

In view of the results of the investigation concerning Lithuania, and considering that the dumping margin is *de minimis*, no provisional measures should be imposed in respect of this country. The Commission will however continue to investigate this issue and consider any further evidence submitted in order to arrive at a definitive determination.

- (58) An offer of an undertaking was received from one of the Polish exporting producers. However, the offer could not be accepted because it would have meant exempting a significant volume of imports from provisional measures and would not, therefore, have been adequate to remove the injury caused to the Community industry.
- (59) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (60) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of a new production or sales entities) should be addressed to the Commission <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the advisory committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

### 3. Final provision

- (61) In the interest of sound administration, a period should be fixed within which the interested parties may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

<sup>(1)</sup> European Commission  
Trade Directorate-General  
Directorate C  
DM 24-8/38  
Rue de la Loi/Wetstraat 200  
B-1049 Bruxelles/Brussel.

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ammonium nitrate other than in aqueous solution and mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight, falling within CN codes 3102 30 90 and 3102 40 90 and originating in Poland and Ukraine.

2. The amount of duty shall be equal to the fixed amount in Euro per tonne of ammonium nitrate shown below for the products produced by the following companies:

Country	Company	Amount of duty (per tonne)	TARIC additional code
Poland			
	Anwil SA ul. Torunska 222, 87-805 Wloclawek Poland	23,13	A174
	Zaklady Azotowe Pulawy SA Al. Tysiaclecia P.P.13, 24-110 Pulawy Poland	22,61	A175
	All other companies	26,91	A900
Ukraine	All companies	33,25	

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

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

5. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

#### Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, present their views in writing and request a hearing from the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may request a hearing concerning the analysis of the Community interest and may comment on the application of this Regulation within one month of the date of its entry into force.

#### Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

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

Done at Brussels, 25 July 2000.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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