COMMISSION REGULATION (EC) No 1497/2001

of 20 July 2001

imposing provisional anti-dumping duties on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine, accepting an undertaking offered by the exporting producer in Bulgaria and terminating the proceeding as regards imports of urea originating from Egypt and Poland

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 [1], as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Investigations concerning other countries

(1) In March 2000, the Commission initiated a review [3] of the definitive anti-dumping duties imposed by Council Regulation (EC) No 477/95 [4] on imports of urea originating in the Russian Federation ('Russia'), pursuant to Article 11(2) of Regulation (EC) No 384/96 ('the basic Regulation'). As a result of this review, the Council, by Regulation (EC) No 901/2001 [5], imposed a definitive anti-dumping duty on imports of urea originating in Russia.

2. Present investigation

Initiation

(2) On 6 September 2000 a complaint was lodged by the European Fertiliser Manufacturers Association (EFMA), on behalf of producers representing a major proportion, in this case more than 80 % of the Community production of urea. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) Consequently, on 21 October 2000, the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Communities* [6] the initiation of an anti-dumping proceeding with regard to imports into the Community of urea originating in Belarus, Bulgaria, Croatia, Egypt, Estonia, Libya, Lithuania, Poland, Romania and the Ukraine.

Investigation

(4) The Commission officially advised the exporting producers, the importers and the users known to be concerned as well as the representatives of the exporting countries concerned and the complainant Community producers about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(5) The Commission sent questionnaires to 13 Community producers, all exporters/producers, all importers as well as all users known to be concerned as well as to all parties which made themselves known within the deadline set out in the notice of Initiation. Replies to these questionnaires were received from nine Community producers, 17 exporting producers, 10 importers, and seven users of urea.

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

Community producers

— Agrolinz Melamin GmbH, Linz
— Grande Paroisse SA, Paris
— Hydro Agri Brunsbüttel, Brunsbüttel
— Hydro Agri Sluiskil BV, Sluiskil
— Hydro Agri Italia, Milan
— SKW Stickstoffwerke Piesteritz BV, Wittenberg

Unrelated importers in the Community

— Helm Dungemittel GmbH, Hamburg
— Unifert France, Sête
— Usborne Fertiliser Ltd, Southampton

Users in the Community

— National Farmers' Union of England and Wales, London
— Framlingham Farmers Ltd, Framlingham
— Neste Chemicals — Sadepan Chimica srl, Helsinki

Exporting producers

Bulgaria

— Chimco AD, Vratza, and its related company Chimco Trade, Varna

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 62, 4.3.2000, p. 19.
[4] OJ L 49, 4.3.1995, p. 1.
[5] OJ L 127, 9.5.2001, p. 11.
[6] OJ C 301, 21.10.2000, p. 2.

Croatia

— Petrokemija d.d., Kutina

Egypt

— El-Delta Company for Fertilisers and Chemical Industries (Asmeda), El Mansura

— Abu Qir Fertilisers and Chemical Industries, Alexandria

Estonia

— JSC Nitrofert, Kothla Jarve

Lithuania

— Joint Stock Company Achema, Jonava and its related company Joint Stock Company Agrochema, Jonava

Libya

— National Oil Corporation and its related company Sirte Oil Company, Tripoli and Marsa-el-Brega

Poland

— Zaklady Chemiczne 'Police', Police

Romania

— S.C. Amonil SA, Slobozia

— Petrom SA Sucursala Doljchim Craiova, Craiova

— Sofert SA, Bacau

Ukraine

— Open Joint Stock Company Concern Stirol, Gorlovka

— Open Joint Stock Company Cherkassy Azot, Cherkassy

— Joint Stock Company DniproAzot, Dniprodzerzhinsk ([1])

Related importers

— Chempetrol Overseas Ltd, Malta

Producers in the analogue country (USA)

— Terra Industries Inc., Sioux City.

(6) The investigation of dumping and injury covered the period from 1 July 1999 to 30 June 2000 ('the investigation period' or 'IP'). As for the trends relevant for the assessment of injury, the Commission analysed the period from 1996 to the end of the investigation period ('the period considered').

(7) Several parties objected to the choice of the dates determining the IP. Some of these claimed that the export prices increased shortly after the end of the IP selected by the Commission and thus that the 12-month IP should end in September 2000. Other parties suggested that an 18-month period starting in January 1999 would allow a more representative analysis of the situation.

([1]) Verification of the market economy claim form only.

(8) These submissions had to be rejected. When selecting the IP, the Commission, in line with Article 6(1) of the basic Regulation, had to ensure that the data of the period leading to the most representative results should be taken into account. In this regard, it was found that the 'agricultural season' in the Community rather than another period would be the most appropriate choice due to the fact that it conditions the sales of urea in the Community and a number of internal reporting systems are adapted to this period. It was therefore concluded that an IP based on the 'agricultural season' would allow for the most reliable and meaningful findings as to the existence of injurious dumping and Community interest.

3. **Product concerned and like product**

Product concerned

(9) The product concerned by this proceeding, urea, is manufactured essentially by combining ammonia and carbon dioxide. The normal raw material for producing both ammonia and carbon dioxide is natural gas. However, they can also be obtained from so-called cracked oil, a by-product from the manufacture of petroleum. Urea may take the form of a liquid or a solid.

(10) Solid urea itself can be subdivided into a prilled and a granular form. Both are pellets, with the granular form being normally larger and harder than the prilled form. Solid urea has both agricultural and industrial applications. Agricultural grade urea can be used either as a fertiliser, which is spread onto the soil, or as an animal feed additive. Industrial grade urea is a raw material for certain glues and resins. Liquid urea can be used both as a fertiliser and for industrial purposes.

(11) All grades of urea have the same basic physical, and chemical characteristics, with only the final stage of manufacture determining whether prills, granules, or solution are produced. Also, it was found that the form of the urea does not necessarily determine the use to which it is put. Therefore, they may be regarded for the purposes of this investigation as a single product. The product concerned falls within the CN codes 3102 10 10 and 3102 10 90.

Like product

(12) It is provisionally determined that the product produced in the countries concerned and exported to the Community is alike in all respects to the product sold on the domestic markets of the exporting countries as well as to the product produced by Community producers and sold on the Community market. The same is true with regard to the product produced and sold in the USA which served as a market economy third country for Belarus and Ukraine. All these products were therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. **DUMPING**

(13) Eight countries subject to the present proceeding are market economy countries, i.e. Bulgaria, Croatia, Egypt, Estonia, Libya, Lithuania, Poland and Romania. Out of the two remaining two countries, Belarus is considered as a non-market economy country while with regard to Ukraine normal value will be established in the same way as in market economy countries provided that the conditions set out in Article 2(7)(b) and (c) of the basic Regulation are met. For this reason, market economy countries, on the one hand, and Belarus and Ukraine, on the other are considered separately.

MARKET ECONOMY COUNTRIES

1. **General methodology**

(14) The general methodology set out hereinafter has been applied for all exporting market economy countries concerned and for those exporting producers in the Ukraine which qualified for market economy status ('MES'). The presentation of the findings on dumping for each of the countries concerned therefore only describes what is specific for each exporting country.

Normal value

(15) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of urea were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(16) The Commission subsequently identified those grades of urea, sold domestically by the companies having representative domestic sales, that were identical or directly comparable to the types sold for export to the Community.

(17) For each grade sold by the exporting producers on their domestic markets and found to be directly comparable to the grade sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular grade of urea were considered sufficiently representative when the total domestic sales volume of that grade during the IP represented 5 % or more of the total sales volume of the comparable grade of urea exported to the Community.

(18) An examination was also made as to whether the domestic sales of each grade 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 grade in question. In cases where the sales volume of urea, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales volume and where the weighted average price of that grade 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 made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of urea represented less than 80 % but 10 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.

(19) In cases where the volume of profitable sales of any grade of urea represented less than 10 % of the total sales volume, it was considered that this particular grade was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(20) Wherever domestic prices of a particular grade sold by an exporting producer could not be used in order to establish normal value, another method had to be applied. In this regard, the Commission used the prices of the product concerned charged on the domestic market by another producer. In all cases where this was not possible, and in absence of any other reasonable method, constructed normal value was used.

(21) 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, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses ('SG & A') and a reasonable margin of profit. To this end, the Commission examined whether the SG & A incurred and the profit realised by each of the producing exporters concerned on the domestic market constituted reliable data.

(22) Actual domestic SG & A expenses were considered reliable where the domestic sales volume of the company concerned could be regarded as representative. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade. In all cases where these conditions were not met the Commission used the SG & A expenses and profit of other producers in the domestic market of the exporting country according to Article 2(6)(a) of the basic Regulation. In cases where this was not possible or appropriate, the amount applicable for the same general category of products was taken as a basis for the construction of the normal value in accordance with Article 2(6)(b) of the basic Regulation. Finally, in all other cases, SG & A and profit margin were provisionally based on the weighted average of the other cooperating exporting producers concerned, in accordance with Article 2(6)(c) of the basic Regulation.

(23) As regards the determination of the profit margin and the level of SG & A on the basis of Article 2(6)(c) of the basic Regulation, interested parties are hereby specifically invited to comment on this issue.

Export price

(24) In all cases where urea was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(25) Where the export sale was made via a related importer, the export price was constructed pursuant to Article 2(9) of the basic Regulation, namely on the basis of the price at which the imported products were first resold to an independent buyer. In such cases, adjustments were made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price. As far as the profit margin is concerned, the latter was provisionally established on the basis of the information available from cooperating unrelated exporters.

Comparison

(26) 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. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

Dumping margin for the companies investigated

(27) According to Article 2(11) of the basic Regulation, for each exporting producer the weighted average normal value by grade was compared with the weighted average export price. However, in cases where there was a pattern of significant price variations between regions, customers or time periods, and where the method comparing weighted average normal value with weighted average export price did not reflect the full degree of dumping, the weighted average normal value was compared to the individual export transactions.

Residual dumping margin

(28) For non-cooperating companies, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(29) For those countries with a level of cooperation close to the information provided by Eurostat, i.e. where there was no reason to believe that any exporting producer abstained from cooperating, it was decided to set the residual dumping margin at the level of the cooperating company with the highest dumping margin in order to ensure the effectiveness of any measures.

(30) For those countries where the level of cooperation was low, the residual dumping margin was determined on the basis of the highest dumped export sales to the Community of representative quantities. This approach was also considered necessary in order to avoid giving a bonus for non-cooperation and in view of the fact that there were no indications that a non-cooperating party had dumped at a lower level.

2. **Bulgaria**

(31) The sole known exporting producer replied to the questionnaire. This reply included data on domestic sales made by a related domestic sales company. A further reply was received from another related company which was acting as a seller of the product concerned on the domestic and export market during two months of the IP. The latter company purchased the main production input (gas) and sold the finished product (urea), after having paid a processing fee to the producer. A company in the Community related to the exporting producer replied to the annex of the questionnaire, intended for related companies.

Normal value

(32) Normal value was constructed in accordance with Article 2(3) of the basic Regulation for the grade of the product concerned sold to the Community.

(33) The exporting producer claimed that a number of interruptions of the gas supply, and consequently the production of urea, during the IP caused important fluctuations of the costs of production. These fluctuations prevent the Commission from reasonably determining the sales made in the ordinary course of trade. Consequently, the determination of the sales made in the ordinary course of trade should be made on a monthly basis.

(34) Fluctuations in costs and prices are almost inevitable in any business. To take account of these for the purpose of establishing which sales were made in the ordinary course of trade, the Commission has consistently applied the methodology of comparing individual domestic prices with the weighted average cost of production for the IP. It is considered that the particular situation of the company that made the request does not justify the deviation from the methodology used for all companies concerned by the present proceeding, insofar as the supply problem of the raw material during part of the IP was entirely attributable to the company. It was therefore considered that any effect on the cost should be reflected in the calculation of the normal value.

(35) It is recalled that the exporting producer sold on the Bulgarian domestic market via two sales companies. Given the distribution of functions between the exporting producer and the sales companies, it was considered necessary to establish the normal value on the basis of prices paid in the ordinary course of trade by independent customers in Bulgaria.

(36) However, in the absence of profitable sales on the domestic market, normal value was constructed in accordance with Article 2(3) of the basic Regulation on the basis of the cost of manufacturing and the SG & A expenses incurred on domestic sales as reported by the companies concerned. In the absence of any other basis, the profit margin was provisionally determined on the basis of the weighted average profits realised by the other exporting producers cooperating in this proceeding in accordance with Article 2(6)(c) of the basic Regulation (see recitals 21 and 22).

Export price

(37) Export sales made directly to an independent customer in the Community were established pursuant to Article 2(8) of the basic Regulation whereas export prices of sales via the related importer of the exporting producer, i.e. 80 % of all export sales to the Community, were constructed according to Article 2(9) of the basic Regulation.

Comparison

(38) Adjustments were made for inland transport, forwarding charges, packing and credit costs.

Dumping margin

(39) The comparison between the normal value and the export price showed the existence of dumping in respect to the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is

Chimco AD: 131,3 %

(40) It was found that the level of cooperation for Bulgaria was high and the residual provisional dumping margin was set at the same level as for the cooperating company, i.e. 131,3 %.

3. **Croatia**

(41) The sole known exporting producer replied to the questionnaire. Two companies in the Community related to the exporting producer replied to the annex of the questionnaire, intended for related companies.

Normal value

(42) Normal value was established on the basis of domestic sales prices for the grade of the product concerned exported to the Community.

Export price

(43) Since, during the IP, all export sales to the Community were channelled via two related importers located in the Community, the export price was constructed according to Article 2(9) of the basic Regulation.

Comparison

(44) Adjustments were made for differences in inland transport, handling, loading and ancillary costs, packing and credit costs.

Dumping margin

(45) The comparison between the normal value and the export price showed the existence of dumping in respect to the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is

Petrokemija d.d.: 72,9 %

(46) The level of cooperation for Croatia was high and the residual provisional dumping margin was set at the same level as for the cooperating company, i.e. 72,9 %.

4. **Egypt**

(47) Two exporting producers replied to the questionnaire.

Normal value

(48) Normal value was established on the basis of domestic sales prices.

Export price

(49) Since all export sales were made directly to independent customers in the Community, export prices were established on the basis of the prices paid or payable in accordance with Article 2(8) of the basic Regulation.

Comparison

(50) Adjustments were made for differences in bank charges, discounts, packing, handling, loading, transport, insurance and credit costs.

(51) One company claimed an adjustment for a deferred discount. This adjustment could not be granted due to a lack of evidence of actual application of this discount.

Dumping margin

(52) The comparison between the normal value and the export price showed the existence of dumping in respect of both cooperating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community border are:

El-Delta Company for Fertilisers and Chemical Industries (Asmeda): 26,4 %

Abu Qir Fertilisers and Chemical Industries: 21,6 %

(53) The level of cooperation for Egypt was high and the residual provisional dumping margin was set at the same level as for the cooperating company with the highest dumping margin, i.e. 26,4 %.

5. **Estonia**

(54) The sole known exporting producer in Estonia replied to the questionnaire. However, a comparison of the reported sales to unrelated parties in the Community with Eurostat data showed an extremely low level of cooperation, i.e. 2,7 %. This is found to be caused by the fact that the Estonian company did not report export sales of urea channelled via independent traders.

Normal value

(55) The exporting producer's domestic sales of urea were not representative compared to its exports of urea to the Community, and domestic prices could therefore not serve as a basis for normal value. Given the fact that there were no other producers of urea in Estonia, normal value could not be based on prices of other sellers or producers.

(56) Consequently, normal value was constructed. In accordance with Article 2(6) of the basic Regulation, the company's own SG & A expenses were used. In accordance with Article 2(6)(b) of the basic Regulation, and in the absence of any other reasonable basis, the SG & A expenses and profits used were those applicable to production and sales of the same general category of products, i.e. fertilisers, for the exporting producer in question in Estonia (see recitals 22 and 23).

Export price

(57) Since the export sales to the Community as reported by the company, were made to independent customers in the Community, they were established on the basis of the price paid or payable according to Article 2(8) of the basic Regulation.

(58) As already mentioned in recital 54, the company claims to be the sole producer of urea in Estonia. Therefore, the Commission has provisionally decided to apply Article 18 of the basic Regulation to the unreported export sales, which according to Eurostat represented 97,3 % of the total exports. The export price of this unreported quantity was determined on the basis of the price of the highest dumped export sales to the Community made in representative quantities of the reported export sales by the company.

Comparison

(59) Adjustments were made for differences in bank charges, handling, loading, transport, insurance and credit costs.

Dumping margin

(60) The export price pattern for Estonia showed significant variations between regions. In this regard, the investigation revealed that dumped prices in certain Member States were offset by higher export prices for other Member States. Consequently, it was considered that the comparison of the weighted average normal value with the weighted average export price did not show the full degree of dumping. Therefore, the weighted average normal value was compared to the individual export transactions.

(61) The comparison between the normal value and the export price showed the existence of dumping in respect to the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

JSC Nitrofert:	34,3 %

(62) The residual provisional dumping margin was set at the same level as for the exporting producer, i.e. 34,3 %.

6. **Libya**

(63) Although initially the sole exporting producer agreed to cooperate, it refused subsequently access to part of substantial information essential for the verification of the reply, in particular as regards domestic sales prices and cost of production of the product concerned. Therefore, the Commission, in order to calculate the provisional dumping margin had to make use of best facts available in accordance with Article 18 of the basic Regulation.

Normal value

(64) The reported domestic sales figures for the IP could not be reconciled with audited accounts or other accounting documents, due to the fact that the company was not willing to provide these documents during the on-spot investigation. Consequently, the correctness and completeness of the domestic sales listings of the product concerned could not be reliably established and the data reported could not be used as a basis for the determination of the normal value.

(65) Likewise, as regards the cost of production of urea sold on the domestic market, the Commission was denied access to essential accounting documents and thus the correctness and completeness of the cost of production could not be reliably established. This concerned in particular the costs for the raw material and the SG & A expenses of the company.

(66) In order to determine the normal value, therefore, the Commission relied on best facts available in accordance with Article 18 of the basic Regulation as mentioned above. In this regard and in the absence of any other information available for the country, the Commission considered it appropriate to base its calculations on the information submitted in the complaint.

Export price

(67) As regards the determination of the export price, the company submitted information which could satisfactorily be verified. For the purpose of the calculation of the dumping margin, the Commission was thus able to use the company's own export prices.

(68) Approximately half of the export sales were made directly to independent customers in the Community, and therefore the export price for these transactions was established on the basis of the prices paid or payable in accordance with Article 2(8) of the basic Regulation.

(69) The remaining export sales to the Community went via a related company and the export prices for these sales had thus to be constructed in accordance with Article 2(9) of the basic Regulation.

(70) A small part of the sales via the related company were subsequently channelled via another related company in the Community. These sales constituted only a marginal part of the Libyan company's total export volume to the Community, however, and their inclusion would not have changed the overall result of the calculations. They were thus disregarded.

(71) Furthermore, sales of non-Libyan origin made by the related company to the first independent customer in the Community and incorrectly reported by the company had to be excluded from the calculations.

(72) As regards the reported SG & A costs of the related company, certain items had to be corrected on the basis of the results of the verification visit.

Comparison

(73) Adjustments were made for differences in packing, handling and loading, ocean freight, insurance and inspection costs and credit costs.

(74) The company claimed that certain credit costs were also incurred on the domestic market, but provided contradictory information in this regard. The investigation has shown that payment terms were not agreed with the domestic customer prior to the sale being made and consequently no adjustment has been made in this respect.

Dumping margin

(75) The comparison between the weighted average normal value and the weighted average export price showed the existence of dumping in respect of the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

National Oil Corporation: 51,4 %

(76) The export volume covered by the cooperating exporting producer was compared to the export data from Eurostat and found to reach the same level. Since the Libyan exporting producer accounted for all export sales reported by Eurostat the residual provisional dumping margin was set at the same level as for the cooperating company, i.e. 51,4 %.

7. **Lithuania**

(77) One company replied to the questionnaire for exporting producers. This reply included data on domestic sales made by a related domestic sales company. A company in the Community related to the exporting producer also replied to the questionnaire intended for related companies.

Normal value

(78) The exporting producer's domestic sales of urea were not representative compared to its exports of urea to the Community and domestic prices could therefore not serve as a basis for normal value. Given the fact that there were no other producers of urea in Lithuania, normal value could not be based on prices of other sellers or producers.

(79) Consequently, normal value was constructed. In accordance with Article 2(6)(b) of the basic Regulation, and in the absence of any other reasonable basis, the SG & A expenses and profits used were those applicable to production and sales of the same general category of products, i.e. other fertilisers, for the exporting producer in question in Lithuania.

Export price

(80) Almost all export sales were made directly to independent customers in the Community. The export price for sales made via a related company represented less than 5 % of the total export sales of the exporting producer. The export price for the latter had to be constructed in accordance with Article 2(9) of the basic Regulation.

Comparison

(81) Adjustments for differences in packing, transport, insurance, handling, loading and ancillary costs have been granted.

(82) Allowances on the normal value were claimed on the basis of the sales of urea, which were not representative. The information provided for domestic sales of the same general category of products, of which the SG & A expenses and profit were used to construct normal value, did not indicate that allowances were justified.

Dumping margin

(83) The comparison between the weighted average normal value and the weighted average export price showed the existence of dumping in respect of the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

Joint Stock Company Achema, Jonava:	9,4 %

(84) As the level of cooperation for Lithuania was high the residual provisional dumping margin was set at the same level as for the cooperating company, i.e. 9,4 %.

8. **Poland**

(85) One exporting producer replied to the questionnaire.

Normal value

(86) Normal value was constructed in accordance with Article 2(3) of the basic Regulation Pursuant to Article 2(6) of the basic Regulation, the company's own SG & A expenses were used. As regards the profit margin and in the absence of any other reasonable basis, the profit applicable to production and sales of the same general category of products, i.e. other fertilisers, for the exporting producer in question was used in accordance with Article 2(6)(b) of the basic Regulation.

Export price

(87) All export sales to the Community were made directly to the independent customers and thus the export price paid or payable was used in accordance with Article 2(8) of the basic Regulation.

Comparison

(88) Adjustments were made for differences on inland transport, ocean freight, EC freight, insurance, handling, loading and ancillary costs, packing, credit costs, commission an other factors.

Dumping margin

(89) The comparison between the weighted average normal value and the weighted average export price showed the existence of dumping in respect of the cooperating exporting, producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

Zaklady Chemiczne 'Police':	31,0 %

(90) The level of cooperation for Poland was high and the residual provisional dumping margin was set at the same level as for the cooperating company, i.e. 31,0 %.

9. **Romania**

(91) Three companies replied to the questionnaire for exporting producers. One Romania company related to one of the exporting producers replied to the Commission's questionnaire and provided information about sales on the domestic and Community market. Another two companies in the Community related to one of the exporting, producers also replied to the questionnaire intended for related importers.

Normal value

(92) Normal value was established on the basis of the prices paid or payable, in the ordinary course of trade, by independent customers on the domestic market in accordance with Article 2(1) of the basic Regulation.

Export price

(93) For export sales made directly to unrelated customers in the Community, the export price was established according to Article 2(8) of the basic Regulation by reference to the prices actually paid or payable. Some 25 % of all export sales to the Community were sold via related importers located in the Community. Consequently, the export price for these sales was constructed according to Article 2(9) of the basic Regulation.

Comparison

(94) Adjustments were made for differences in inland freight, packing, handling, loading and ancillary costs, credit costs and commissions.

Dumping margin

(95) The comparison between the normal value and the export price showed the existence of dumping in respect of each of the three cooperating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community border are:

S.C. Amonil SA, Slobozia:	28,3 %
Petrom SA Sucursala Doljchim Craiova, Craiova:	47,0 %
Sofert SA, Bacau:	32,6 %

(96) Since the level of cooperation was high, the residual provisional dumping margin was set at the same level as for the cooperating company with the highest dumping margin, i.e. 47,0 %.

BELARUS AND UKRAINE

1. **Analogue country**

(97) According to Article 2(7) of the basic Regulation, for non-market economy countries and for companies to which MES could not be granted, normal value has to be established on the basis of the price or constructed value in a market economy third country ('analogue country').

(98) In the notice of initiation of this proceeding, the Commission indicated its intention to use Slovakia as an appropriate analogue country for the purpose of establishing normal value for Belarus and Ukraine.

(99) The exporting producers in Belarus and Ukraine, the mission of Belarus to the European Union, and an importers association (EFIA) raised objections to this proposal. The main arguments against Slovakia were differences in access to raw materials, differences in the production process and a different scale of production compared to the non-market economy countries involved in this proceeding, influence of domestic sales prices by barter trade and cash problems, and the protection of the Slovakian market by import duties. The interested parties in question suggested instead Lithuania as an appropriate analogue country.

(100) The investigation revealed that Lithuania did not have a sufficiently competitive domestic market of the product concerned. In fact, there was only one producer and the market was furthermore protected by import duties against Russian imports.

(101) As regards Slovakia, the Commission acknowledges that it has been considered as the most appropriate analogue country in a previous review concerning definitive anti-dumping measures imposed on imports of urea originating in Russia. In absence of any other alternative it was consequently used as an analogue country. Thus, it would constitute a reasonable choice for an analogue country in the present proceeding.

(102) Nevertheless, in the present proceeding the Commission decided to investigate in further detail all possible alternatives and for this purpose sent a request for information on sales and market conditions to producers of the product concerned in the eight market economy countries involved in this proceeding and to known producers in other market economy countries. Replies were received from producers in all eight market economy countries subject to the proceeding, from one producer in Australia and from one producer in the USA.

(103) The analysis of all these replies showed that the USA seemed to be the most appropriate analogue country. The USA had a highly competitive market for the product concerned, with more than ten producers, a high number of end-users and significant imports from third countries. Although anti-dumping duties were imposed on imports of the product concerned from the former Soviet Union, there were still substantial imports of urea from other countries.

(104) Considering the above, it was concluded that the USA was the most appropriate analogue country and that under these circumstances the selection of the USA seemed reasonable and justified in accordance with Article 2(7) of the basic Regulation.

(105) The Commission subsequently sent a more detailed questionnaire to the producer in the USA requesting information on domestic sales prices and cost of production of the product concerned. The reply of the producer was verified on the spot.

(106) The Commission examined whether sales of the product concerned in the USA were made in the ordinary course of trade by reason of price.

(107) As regards the cost of production, the verification has shown that during the second half of the IP, the price for natural gas on the US market was at an unusually high level which could be explained by a situation of over-demand. An adjustment was therefore made to the cost of natural gas as paid by the US producer.

(108) Taking into account the above correction, domestic sales of the US producer concerned were made in the ordinary course of trade.

(109) As a result, normal value was established as the weighted average domestic sales price of the product concerned to unrelated customers by the cooperating US producer.

2. **Belarus**

(110) Although the sole exporting producer in Belarus initially intended to cooperate in this proceeding, the reply to the Commission's questionnaire showed significant deficiencies. Furthermore, a number of written requests for clarification and for additional information did not receive a reply from the company. Therefore, in order to calculate the provisional dumping margin, the Commission had to make use of best facts available in accordance with Article 18 of the basic Regulation.

Normal value

(111) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was established as described in recital 106 to 109.

Export price

(112) The quantity and value of the reported export sales could not be reconciled with Eurostat data since the volume and value of the export sales reported were substantially below the data from Eurostat. The company did not provide any reasonable explanation concerning these discrepancies nor did it provide any documents supporting the reported export sales to the Community, despite specific requests thereof by the Commission.

(113) Therefore the Commission had no other choice than to disregard the data provided by the company and use best facts available, in accordance with Article 18 of the basic Regulation. In the absence of any other reasonable basis, the export price for Belarus was thus established on the basis of Eurostat data. Since the facts available indicated that all sales were made via traders, an appropriate adjustment for commissions was made.

Comparison

(114) Adjustments were made for differences in commissions, transport, handling, loading and ancillary costs, where they were found to be reasonable and accurate.

(115) The adjustment for inland transport was based on tariffs found in the analogue country, taking into account the distances between the factory of the exporting producer and the port of loading.

Dumping margin

(116) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price. This comparison showed the existence of dumping. The countrywide single weighted average provisional dumping margin, expressed as a percentage of the cif value was 75,7 %.

3. **Ukraine**

(117) Four companies replied to the questionnaire for exporting producers. Three of these companies requested MES pursuant to Article 2(7)(c) of the basic Regulation.

Analysis of market economy status

(118) The Commission sought all information deemed necessary and verified on the spot all information submitted in the MES applications, at the premises of the companies in question. All three claims were analysed on the basis of the five criteria set out in Article 2(7)(c) of the basic Regulation.

(119) For two companies, it was established that, their decisions regarding prices and costs were made without significant state interference within the meaning of Article 2(7)(c) and substantially reflected market values. Both companies had accounts independently audited in line with international accounting standards, and production cost and the financial situation were not subject to significant distortions. Although one of the companies was involved in barter trade, this was only marginal and furthermore did not relate to the product concerned. Finally, bankruptcy and property laws were applicable to the companies concerned and exchange rate conversions were carried out at the market rate.

(120) Consequently, it was concluded that the above two companies fulfilled the conditions set by Article 2(7)(c) of the basic Regulation. These companies are:

— Cherkassy Azot, Cherkassy,

— Concern Stirol, Gorlovka.

(121) For the third company, it was found that it was significantly involved in barter trade, including certain transactions for the product concerned. Furthermore, the State Property Fund held shares allowing it to block a number of decisions, such as amendments to the company's articles of association and therefore has the possibility to exercise significant interference.

(122) Consequently, this company did not fulfil the conditions set by Article 2(7)(c) of the basic Regulation.

(123) The companies concerned and the Community industry were given an opportunity to comment on the above findings.

(124) The exporting producer who was not granted MES contested the Commission's findings, namely regarding the actual state interference and the volume of barter trade. However, no new arguments were brought forward in order to alter the determination made in view of the MES.

(125) The Community industry opposed the fact that MES was granted to two Ukrainian companies. It argued that the Ukrainian companies were operating in a macroeconomic environment where state intervention is the predominant factor, that the state fixes the price of gas, which is the main raw material in the production of urea, that barter trade is widespread and that companies do not apply all of the key international accounting principles.

(126) The Commission observes that state intervention is still a predominant factor in the economy of Ukraine. In a MES analysis individual companies have to show that market economy conditions prevail for their individual companies in respect to the manufacture and sale of the like product. No traces of the alleged widespread barter trade other than the ones already mentioned in the above recitals were found for the companies under consideration. The two companies' accounts were audited in line with international accounting standards. The Commission did not find any indication of state intervention in the trade of gas other than the one mentioned recitals 128 and 129.

(127) It was therefore decided to grant MES to two companies and to reject the MES claim for the third. The Advisory Committee was consulted and did not object to the Commission's conclusions.

(128) Further verification in the Ukraine has also shown that the company which was not granted MES had supplied incorrect information as to its role in state programmes, whereby cheap raw materials were provided to producers of fertilisers in order to support the local agricultural sector, and more specifically to this company in order to manufacture the product concerned.

(129) The two companies which were granted MES were also involved in such programmes, but the investigation revealed that this was only marginal and furthermore for upstream products. Any impact on the cost of ammonia, which is produced from natural gas and used both to produce the product concerned and other fertilisers, has been corrected by making an adjustment to the companies' costs.

(130) It was therefore considered that the determination to grant MES to two companies and to reject the MES claim for the third should be maintained.

Individual treatment

(131) Unless an exporting producer can demonstrate that market economy conditions prevail for him, a country-wide duty has to be calculated for non-market economy countries and for countries falling under Article 2(7)(b) and (c) of the basic Regulation, except in those cases where companies can demonstrate that their export activities are free from State interference and that there is a degree of legal or factual independence from the State so that the risk of circumvention of the country-wide margin is removed.

(132) The Ukrainian company to which MES was not granted requested individual treatment. The Commission sought and verified all information deemed necessary for the purpose to determine whether the company concerned qualified for individual treatment. In this regard, it was found that as far as the export activities of the company were concerned the State could not interfere in these activities as to permit circumvention of the measures if that exporter was granted an individual dumping margin. It was therefore considered justified to grant individual treatment to the company concerned, namely to Joint Stock Company DniproAzot, Dniprodzerzhinsk.

Tolling

(133) The investigation revealed that a number of companies in the Ukraine made part or all of their domestic and/or export sales under tolling agreements.

(134) Under these agreements, one company supplies raw materials (natural gas, and in some cases also electricity) to a second company, which returns the finished product to either the first company supplying the raw material or to a third party. The company which processes the raw material does not receive any invoice for the raw material supplied nor does it issue any invoices for the finished product delivered. This company only receives a fee for the transformation of the raw material into the product concerned. Under Ukrainian law, the provider of the raw materials, in this case the first company, remains the owner of the finished product.

(135) It is clear from the above that under tolling agreements, the price paid or payable for the like product could not be established, let alone verified, at the premises of the cooperating companies. Therefore, and in the absence of cooperation of any of the other companies involved in the tolling agreements, the Commission disregarded provisionally all sales made under these tolling agreements.

Normal value for companies granted MES

(136) The companies which were granted MES were subsequently requested to submit a full questionnaire reply including domestic sales information and information on cost of production of the product concerned. These replies have been verified on the Spot at the premises of the companies concerned.

(137) For one of these companies it was found that a considerable part of its domestic sales was made under tolling agreements. For the reasons outlined above in recitals 134 and 135, domestic sales made under tolling agreements had provisionally to be disregarded.

(138) For one exporting producer, the domestic sales not made under tolling agreements were still representative. The SG & A expenses reported by this exporting producer had to be corrected. The Commission will further examine whether adjustments to other cost factors such as depreciation incurred by this Ukrainian exporting producer are necessary.

(139) For the same exporting producer, it was found that it had sufficient sales made in the ordinary course of trade. Normal value could therefore be established on the basis of domestic sales prices.

(140) For the second company, it was found that it did not have representative domestic sales of the like product. Therefore, normal value was established on the basis of the domestic prices of the exporting producer having representative sales made in the ordinary course of trade.

Normal value for companies not granted MES

(141) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers that were not granted MES was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of the prices paid or payable on the domestic market of the analogue country for products comparable to those sold by the Ukrainian exporting producers to the Community (see recitals 106 to 109).

Export price

(142) The investigation revealed that all export sales to the Community reported by one of the companies were on the basis of tolling agreements. The same applied to part of the export sales reported by the other company. Moreover, a third company which requested neither market economy status nor individual treatment made all export sales to the Community under tolling agreements.

(143) For the reasons outlined above in recitals 134 and 135, export sales made under tolling agreements had to be provisionally disregarded.

(144) As a consequence, only the company which was granted individual treatment had verifiable export prices and only one of the two companies which were granted MES still had sufficiently representative verifiable export prices after the elimination of the exports under tolling agreements.

(145) Since all sales not made under tolling agreements were directly to independent customers in the Community, the export prices were established on the basis of the prices paid or payable in accordance with Article 2(8) of the basic Regulation.

Comparison

(146) 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. In this respect, adjustments were made for differences in transport, handling, loading and ancillary costs and physical differences.

(147) An adjustment for physical differences was made to the normal value based on domestic sales in the analogue market economy country. This adjustment was necessary because the like product sold in the USA was granular urea while the product exported by the Ukrainian exporting producers was prilled urea. The adjustment was based on the difference in market value between granular and prilled urea during the IP on the US market. Further adjustments to this normal value were made for transport costs and for credit.

(148) An adjustment for inland transport costs was made to the normal value. This applied to both, companies that obtained MES and the normal value established in the analogue country.

(149) Adjustments to the export price were made for inland transport in Ukraine, and for handling, loading and ancillary costs. The adjustment for inland transport was based on tariffs found in the analogue market economy country, taking into account the distances between the factories of the exporting producers and the port of loading in Ukraine.

Dumping margin

(150) For the company which was granted MES and for which the export prices paid or payable could be verified, the weighted average normal value of the type exported to the Community was compared to the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.

(151) For the company which was granted individual treatment and for which the export prices paid or payable could be verified, the weighted average normal value for the type exported to the Community established for the analogue country was compared to the weighted average export price of the product type exported to the Community, as provided for under Article 2(11) of the basic Regulation.

(152) The provisional dumping margins expressed as a percentage of the cif import price at the Community border are:

— Cherkassy Azot, Cherkassy:	22,8 %
— DniproAzot, Dniprodzerzhinsk:	68,0 %

(153) Since there was at least one company which did not cooperate in this proceeding, since the export prices paid or payable for considerable quantities exported under tolling agreements were not verifiable, the residual provisional dumping margin was set by comparing the weighted average normal value established in the analogue country for the type exported to the Community to the weighted average export price of transactions with the lowest export prices, representing at the same time a considerable quantity of the exports with verifiable export prices, of the product type exported to Community. On this basis, the residual provisional dumping margin, expressed as a percentage of the cif import price at the Community border, is 83,9 %.

C. **INJURY**

1. **Definition of the Community industry**

(154) Of the ten complainant Community producers, one (Kemira Agro Rozenburg BV) did not cooperate with the Commission, and was, therefore, not regarded as being part of the Community industry. Another Community producer (Irish Fertiliser Industries Ltd) did not provide the information requested in the format required and is considered not to have cooperated with the Commission, thus likewise not forming part of the Community industry.

(155) A number of exporting producers claimed that, as some Community producers also purchased and imported urea from the countries concerned, these producers should be excluded from the definition of the Community industry.

(156) The investigation established that some of the complainant Community producers purchased the product concerned from sources both inside and outside the Community, including from the countries concerned. However, in the most part these purchases were small in volume, and were made to cover shortfalls in supply due to maintenance. One company did make more substantial purchases during the IP, equivalent to 20 % of its production. These purchases were made to supplement their own product range, were not sufficient to consider the company as anything other than a Community producer of urea. For these reasons, it is provisionally determined that all eight companies can be included in the Community production.

(157) As these eight complainant cooperating Community producers represent more than 76 % of the Community production of urea they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

2. **Community consumption**

(158) Community consumption was established by combining the volumes of sales of the Community industry on the Community market, production of the remaining producers on the Community market as contained in the complaint, together with information provided by the cooperating exporting producers, supplemented by Eurostat figures, to arrive at the volume of imports.

(159) From this data, it was established that Community consumption increased each year, and by a total 28,5 %, between 1996 and the IP.

3. **Imports from the countries concerned**

Preliminary remarks

(160) As outlined in recital 228, the countrywide injury margins for Egypt and Poland are both *de minimis*. Accordingly, imports of urea from these two countries have not been included as imports from the countries concerned for the purposes of the injury assessment.

Cumulative assessment of the effects of the imports concerned

(161) The Commission considered whether imports from the countries concerned [1] should be assessed cumulatively on the basis of the criteria set out in Article 3(4) of the basic Regulation.

(162) The dumping margins found are more than *de minimis*, the volumes of imports from each country concerned were substantial and well above the levels set out in Article 5(7) of the basic Regulation, and a cumulative assessment was considered appropriate in view of the conditions of competition both between imports from these countries and between these imports and the like Community product. Prices have fallen significantly over the period considered. All exporting producers, additionally, undercut the sales prices of the Community industry, whilst using the same or similar channels of trade. For these reasons, it is provisionally concluded that imports originating in Belarus, Bulgaria, Croatia, Estonia, Lithuania, Libya, Romania, and Ukraine should be assessed cumulatively.

Volume and market share of the imports concerned

(163) Imports of urea from the countries concerned into the Community increased in volume by 95,2 % from 911 000 tonnes in 1996 to 1 778 000 tonnes during the IP. This compares to the increase of 28,5 % in Community consumption over the same period. As a result, the market share of the countries concerned rose from 20,8 % to 31,5 % over the same period as shown in the following table.

Market share of Imports	1996	1997	1998	1999	IP
Countries concerned	20,8 %	20,6 %	19,4 %	25,0 %	31,5 %
Index	100	99	93	120	152

Prices of dumped imports

(164) The weighted average price of imports originating in the countries concerned fell from EUR 158 in 1996 to EUR 97 during the IP i.e. by 38,7 %. The fall was even greater between 1996 and 1999, when prices fell almost 50 % to EUR 79.

[1] All references to 'the countries concerned' relate solely to the eight countries covered by this proceeding, excluding Egypt and Poland.

Undercutting

(165) The Commission has examined whether the exporting producers of the countries concerned undercut the prices of the Community industry during the IP. For the purposes of this analysis, the cif prices of the exporting producers have been adjusted to a Community frontier, ex quay, custom duty paid level (DEQ). These prices have then been compared to Community producers' verified ex-works prices.

(166) Some exporting producers claimed price adjustments based on quality differences and deterioration during transport. However, the Commission found that there were no quality problems experienced by users of urea. This was further re-enforced by one exporter of urea who stated there was no difference between their product and Community produced product. Therefore, these claims are provisionally rejected.

(167) The price comparisons have been made at a prilled to prilled, granular to granular, bulk to bulk, and bagged to bagged level. The undercutting margins found on this basis, by country, expressed as a percentage of the Community producers' prices, are as follows:

(%)

Country	Price undercutting margin
Belarus	2,25
Bulgaria	9,56
Croatia	5,19
Estonia	10,53
Libya	3,69
Lithuania	2,88
Romania	2,23
Ukraine	5,61

4. **Situation of the Community industry**

Production

(168) Community industry production shrank from 3 489 000 tonnes in 1996 to 3 232 000 tonnes in the IP, i.e. a fall of 7,4 %. The main year on year decreases were between 1996 and 1997 (–4,0 %) and between 1998 and 1999 (–3,9 %), whilst there was a slight year on year increase between 1999 and the IP (+0,7 %).

Capacity and capacity utilisation rates

(169) The total production capacity of the Community industry remained largely stable over the period considered at around 4 500 tonnes per annum, resulting in capacity utilisation falling from 74,9 % to 70,9 %.

Sales on the Community market

(170) Between 1996 and 1999 the Community industry recorded single digit percentage rises in sales volumes. Between 1999 and the IP this trend was reversed and sales volumes fell by more than 5 %. Overall sales volumes rose by 7,5 % between 1996 and the IP.

Stocks

(171) It has been found that the Community industry does not necessarily distinguish between stocks for sale on the open market and those destined for internal consumption. Also as sales to agricultural customers are seasonable in nature, the stock levels will vary greatly over the course of a year. Finally, as urea is also stockpiled by co-operatives of farmers, it was found that no meaningful measurement of stock levels could be made.

(172) For these reasons, the Commission considers that stock levels are not a relevant injury factor in this investigation.

Market share

(173) In all, the Community industry lost 10,3 % of the Community market over the period considered. Between 1996 and 1999 increasing Community consumption was accompanied by rising sales volumes for the Community industry. However, as the former outstripped the latter, the Community industry still lost 5,2 % of the market over this four-year period. During the IP the Community industry suffered a much more pronounced loss of market share. Consumption increased by 5,2 % whilst sales volume fell by 5,4 % resulting in a loss of 5,1 % of the market for the Community industry in that year alone.

Prices

(174) The Community producers' average net sales price fell substantially by EUR 48,7, or 31,4 %, over the period considered. There was a 15 % price increase from Eur 92,2 to EUR 106,3 during the IP, but this was still not sufficient to bring prices back to the 1998 level, let alone any earlier period.

Profitability

(175) The weighted average profitability of the Community industry deteriorated from a profit of 27,2 % in 1996 to a loss of 4,3 % during the IP. Within this trend, some recovery was seen between 1999 and the IP when losses were reduced from 14,4 % to 4,3 %, mainly as a result of the recovery of sales prices. This compares with a profit of 2,3 % during 1998.

Employment, productivity and wages

(176) Employment in the Community industry fell each year during the period considered. In total 264 jobs, or nearly 18,5 % of the workforce, were lost.

(177) As reductions in the workforce outstripped reductions in production, productivity was correspondingly improved over the period. This was particularly marked during the IP when production increased whilst the workforce still fell.

(178) Average wages rose over the period considered, but there is no indication that this was anything more than a cost of living increase.

Investment and return on investments

(179) Investments by the Community industry were reduced by 32,4 % between 1996 and the IP.

(180) The return on investments followed a similar downward trend as that seen for profitability.

Cash flow

(181) Cash flow from the operation fell by 111,6 % over the period considered from EUR + 141 million in 1996, to EUR – 16 million during the IP.

Ability to raise capital

(182) All of the cooperating Community producers are part of larger groups. Therefore, whilst none of the companies reported any difficulties in raising capital during the period considered, this indicator is not considered to be a good reflection of the situation of the Community industry.

Magnitude of the dumping margin

(183) As concerns the impact on the Community industry of the magnitude of the actual margins of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

5. **Conclusion on injury**

(184) The situation of the Community industry deteriorated significantly between 1996 and the IP. Production (–7,4 %), capacity utilisation (–4,0 %), market share (–10,3 %), prices (–31,4 % or EUR –48,7 per tonne), profits (down 31,5 percentage points), and employment (–264) all fell during this time. The Community industry also reduced its investments and saw its cash flow turn from positive to negative.

(185) Although the Community industry increased its sales volume (+ 7,5 %) and improved its productivity, it was unable to materially benefit from the expanding demand for urea in the Community, which increased by 28,5 % over the period considered, whereas, as mentioned previously in recital 173, the Community industry lost market share.

(186) There was some recovery for the Community industry between 1999 and the IP. Based on the 1999 figures, production rose by 0,7 %, and prices increased by an average EUR 14,1 per tonne. Consequently, profitability improved by 10,1 percentage points, but still remained below zero. Obviously, these improvements were not sufficient to return any of the indicators even to their 1998 level, which could be considered as satisfactory, let alone any earlier period.

D. **CAUSATION OF INJURY**

1. **Introduction**

(187) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission has examined whether the dumped imports of urea originating in the country concerned have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(188) Urea is a basic chemical product and it is the price of urea which drives the market. Indeed, there are no perceived quality differences between the imported and the Community produced product (see recital 12) and both products are completely interchangeable. This finding is not invalidated by the fact that there is a preference in the agricultural sector for granular over prilled urea, a preference which has been accounted for in the Commission's price undercutting analysis.

(189) The price of the imports from the countries concerned fell by 38,7 % over the period considered. At the same time these imports increased by 95,2 % in absolute terms and by 10,7 percentage points in terms of share of the market.

(190) Faced with these market conditions, the Community industry had the choice of maintaining prices and losing market share or cutting prices with the consequential effect on profitability. Ultimately, both situations came about. The Community industry's prices fell by 31,4 %, its market share still fell by 10,3 %, and its profitability deteriorated from a profit of 27,2 % to a loss of 4,3 %, over the period considered.

3. **Effect of other factors**

Imports from other third countries

(191) As the countrywide injury margin for imports originating in Egypt and Poland were found to be *de minimis*, these imports were considered as 'imports from other third countries'. Accordingly, the import volume of urea from other third countries increased from about 327 000 tonnes in 1996 to around 558 000 tonnes in the IP, i.e. by 70,6 %. This resulted in the market share of the imports from these countries increasing from 7,4 % in 1996 to 9,9 % in the IP. At the same time the weighted average price of these imports fell by 26,0 % from EUR 152,1 to EUR 120,7 per tonne.

(192) The most important suppliers in this group of countries during the IP were Egypt and Poland. Indeed these two countries accounted for more than half of all imports from other third countries during the IP. Egypt and Poland also more than account for the increase in market share of other third country imports over the period considered. Without Egypt and Poland the remaining countries actually lost market share as shown in the following table.

Other third country Imports	1996	1997	1998	1999	IP
Import volumes in thousand tonnes	327	489	601	547	558
Of which Poland and Egypt	114	227	314	258	319
Market shares	7,4 %	10,2 %	11,7 %	10,2 %	9,9 %
Of which Poland and Egypt	2,6 %	4,7 %	6,1 %	4,8 %	5,7 %

(193) Considering the conclusions on imports from Egypt and Poland, that the remaining imports have a small and declining share of the Community market, and that the average price of these imports was much higher, during the IP, than those from the countries concerned; it is concluded that these imports cannot have contributed to the material injury suffered by the Community industry.

Effect of world demand on the Community industry

(194) Certain interested parties claimed that urea is a commodity with a world market price, and that any injury suffered by the Community industry should be directly attributed to the fall in this price, and not to the effect of dumped imports. A number of exporting producers, as well as other interested parties, have pointed to the closure of the Chinese market in 1997 as the alleged root of the problems for the Community industry.

(195) Firstly, it should be noted that the existence of a world market price, if any, is not an excuse to engage in injurious dumping. Secondly, as to the question of a world price, it has been determined that there are independent trade journals, which publish spot prices for urea at various points around the world. These prices have shown quite wide price variations from place to place over the period considered. For example at the end of 1999 i.e. midway through the IP, there was a 40 % difference between the highest (Caribbean) and lowest (Antwerp) spot price. This is a greater difference than can be explained by product differences alone. Furthermore the prices of sales by individual exporting producers on the Community market, their sales on their own domestic markets (where found), sales by the Community industry, and imports from other third countries, varied widely. Given this finding, that different prices are payable on different markets, it is provisionally determined that there is no world price for urea. Therefore, this is not a factor which could have had any influence on the situation of the Community industry.

(196) Concerning the effect of developments of other markets, it has been confirmed that China banned imports of urea in 1997. Prior to this China had been a large net importer of the product. Undoubtedly, this closure of a sales channel will have had some consequences on the market. However, as found in previous fertiliser cases, it should be noted that the existence or not of a situation of oversupply, whatever its importance, does not provide a justification for dumped imports causing injury to the Community industry.

4. **Conclusion on causation**

(197) It is provisionally concluded that the dumped imports originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine have caused the material injury suffered by the Community industry given the coincidence in time between the price decreases, the undercutting, and the increased market share of the dumped imports from the countries concerned compared with the decline in sales prices and profitability suffered by the Community industry.

(198) No other factors have been found that might explain such deterioration in the situation of the Community industry. Accordingly, it is concluded that there is a causal link between the dumped imports from the countries concerned and the material injury suffered by the Community industry.

E. **COMMUNITY INTEREST**

1. **Preliminary remark**

(199) In accordance with Article 21 of the basic Regulation, the Commission considered 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 examination of all the various interests involved i.e. those of the Community industry, the importers and traders, and the users of the product concerned.

(200) In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission sent questionnaires to the Community industry, five other producers in the Community, 54 importers/traders (six of who were related to exporters in the countries concerned), and 11 users/users associations of the product concerned. Ten importers/traders (including the six related importers) as well as seven users/users associations replied.

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

2. **Interest of the Community industry**

(202) Although the Community industry has suffered material injury in the IP, there are clear indications that it is able to respond market forces, i.e. that it is viable and competitive. Between 1999 and the IP Community industry prices rose (up EUR 14,1 per tonne) and losses reduced (from −14,4 % to −4,3 %). This is in parallel to an increase in the price of imports from the countries concerned (up EUR 18,0 per tonne), over the same period. Therefore, even operating in a market where significant dumping took place, the Community industry has shown itself able to take advantage of any realistic opportunities.

(203) Were measures to be imposed, and with the ensuing return to fair market conditions, the Commission concludes that the Community industry would be able to restore and maintain its activities in the Community.

3. **Interest of importers/traders**

(204) Questionnaire responses and information were received from the European Fertiliser Import Association (EFIA) and five unrelated importers of urea. Verification visits were carried out at the premises of three of the parties.

(205) With the falling price of urea over the period considered, importers have also felt the effects of reduced margins. Nevertheless, all the unrelated cooperating importers, which account for approximately 10 % of imports of urea from the countries concerned during the IP, are opposed to the imposition of measures.

(206) The likely impact for importers of the imposition of measures was considered. Even operating at full capacity, the Community industry is unable to supply all of Community demand for urea. Accordingly, there will be a continuing requirement for significant quantities of imported urea. It is, therefore, concluded that imports of urea will continue, albeit at non-injurious prices. It may be that a return to normal market conditions will have a beneficial effect on importers, although it is accepted that some importers may face adverse consequences after the imposition of anti-dumping measures.

4. **Interest of users**

(207) Users of the product concerned fall into two distinct categories. Firstly, there are farmers who use urea predominantly as a fertiliser. Farmers account for approximately 58 % of Community consumption of urea. For them, price is the key determining factor.

(208) Secondly, there are the industrial users, for which urea is a raw material in the manufacture of glues and resins. Whilst price is clearly important, industrial users are more concerned with continuity of supply and the absence of contaminants in the urea.

(209) It is considered appropriate to look at the interest of these two different groups separately.

Farmers

(210) Five associations representing farmers submitted questionnaire responses or information to the Commission. Verification visits were carried out to two of the parties. A separate analysis was also carried out by the Commission on the contribution that fertilisers have to farmers' final costs.

(211) The Commission is mindful of the difficult situation currently faced by farmers. From the information available it is provisionally concluded that fertilisers in general, and by extension urea, account for between 3,0 % and 10,0 % of farmers' total costs depending on the specific activity, with 6,0 % being a reasonable average. The weighted average proposed duty is 10,6 %. In a worst case scenario, for farmers using urea as their only fertiliser, this will result in an average increase of 0,6 % in costs, assuming that current application patterns continue. This also assumes that importers/traders pass on duties in full, and that farmers continued to source their urea only from the countries concerned.

(212) However, it is highly unlikely that farmers will actually feel this full impact. It is more probable that importers/traders will not pass the duties on in full, and also that farmers will increasingly source their urea either from other countries not subject to measures or form the Community industry. For these reasons it is provisionally concluded that the impact of the measures on farmers will be negligible.

Industrial users

(213) Three industrial users submitted questionnaire responses, of which two were visited on spot. It is provisionally concluded that, for industrial users, urea represents a larger part of production costs than it does for farmers. Typically urea accounts for 30,0 % to 40,0 % of their total costs. The effect of the proposed duties would therefore be to increase their costs by, on average, 3,2 % to 4,2 %, again assuming that industrial users exclusively process urea from the countries concerned and that importers/traders pass on the duties in full. For the reasons explained in recital 212, this is not very likely. Moreover, the profit margins are greater for industrial users than for farmers and there appears to be greater scope for passing on any increases to their customers.

5. **Competition and trade distorting effects**

(214) The countries concerned, not including Egypt and Poland, accounted for 76,1 % of all imports of urea during the IP. Russian urea, which is currently subject to anti-dumping duties ([1]), accounted for a further 2,3 % of imports. A number of interested parties have claimed that, with such a high level of imports covered by the proceeding, the imposition of duties would lead to the disappearance of a number of the exporting producers from the Community market, thus considerably weakening competition, and leading to an excessive increase in the price for urea.

(215) Whilst some exporting producers may withdraw from the Community market, it is reasonable to assume that most of them will continue to supply urea at a non-injurious price. Also, the non-imposition of measures on imports originating in Egypt and Poland has reduced the proportion of imports that would be subject to anti-dumping duties.

(216) Nor should it be overlooked that the absence of injurious dumping from the eight countries concerned will make the Community market more attractive to other sources of supply. Evidence has been submitted that new production plants elsewhere in the world have and will come on-stream in the near future. These companies will also be looking for outlets for their available urea.

(217) The continuing need for imports will ensure that a number of competitors to the Community producers remain on or enter the market. Together with the Community producers, they will ensure that users continue to have the choice of different and competing suppliers of the product concerned.

(218) For these reasons, it is provisionally concluded that there are no reasons why the imposition of the proposed anti-dumping duties will have a significant impact on competition. On the contrary, it would eliminate the trade-distorting effects of dumping.

6. **Conclusion on Community interest**

(219) Taking account of all of the above factors, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping measures.

F. **PROVISIONAL ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(220) 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. To establish the level of duty, account has been taken of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.

(221) To establish the level of duty needed to remove the injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of a comparison of the weighted average import price, with the non-injurious price of urea sold by the Community industry on the Community market.

(222) The non-injurious price has been obtained by taking the actual, verified sales prices of the Community industry, adjusting these to a break even point, and then finally adding a profit margin that may reasonably have been achieved in the absence of injurious dumping. As in the undercutting calculation the calculation was made at a prilled to prilled, granular to granular, bulk to bulk, and bagging-type to bagging-type level. The profit margin used for this calculation is 8 % of turnover.

(223) The complainant submitted that a profit margin of 15 % return on capital employed (ROLE) would be appropriate. It argued that this level of return was necessary to re-invest for the long term and to achieve an adequate return on equity for shareholder. Given the level at which the Commission compared the prices of imported and Community produced urea, the Commission provisionally concludes that profitability could not be determined on the basis of ROLE but must be directly linked to turnover of the product concerned.

(224) The Court of First Instance has ruled that '[...] the profit margin [...] must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of dumped imports' ([2]). Accordingly, it was within these parameters that the Commission considered the question of profitability.

([1]) See Regulation (EC) No 477/95.

([2]) Case T-210/95 ruling dated 28 October 1999, recital 60.

(225) In 1996, and 1997, the years after imposition of anti-dumping duties on urea from Russia but prior to the closure of the Chinese market to imports, the Community industry had averaged profits on turnover of 27,2 %, and 11,3 % respectively. This indicates that the Community industry is able to make good returns when fair market conditions operate. Nevertheless the market conditions in 1996 and 1997 are not necessarily representative of the market conditions during the IP. An examination of any underlying changes in the market between the beginning and the end of the period considered was also made.

(226) As outlined above the main users of urea are farmers. From the submissions made in this case, it is clear that the ability of farmers to pass on any price rises has reduced over the period considered. For this reason farmers are now much more price conscious than they were even a few years ago. In order to preserve their profits or to reduce their losses, they will be resistant to any increases in their own costs, including those of fertilisers. At the same time raw material prices for urea manufacturers have risen. In these circumstances, it is provisionally concluded that there was no likelihood of the Community industry achieving double figure profitability during the IP. Taking all circumstances into account, 8 % seems to be a reasonable profit that the Community industry could have achieved during the IP in the absence of dumped imports.

(227) 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.

(228) The results of these calculations identified *de minimis* countrywide underselling margins for both Egypt and Poland.

2. **Provisional measures**

(229) In view of the results of the investigation concerning Egypt and Poland, and specifically that the country wide injury margins are *de minimis*, provisional measures should be imposed and the proceeding should be terminated in respect of exporting producers in these countries.

(230) 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 Belarus, Bulgaria, Croatia, Estonia, Lithuania, Libya, Romania, and the Ukraine at the level of the injury margins found since, in all cases, these are lower than the dumping margins.

(231) 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 proposed that provisional duties take the form of a specific amount per tonne.

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

Country	Company	Basis for anti-dumping duty (%)	Provisional duty (EUR/tonne)
Belarus	Single country-wide margin	5,6	5,46
Bulgaria	Chimco AD	21,0	18,80
	Others	21,0	18,80
Croatia	Petrokemija d.d.	13,1	12,18
	Others	13,1	12,18
Estonia	JSC Nitrofert	18,0	17,67
	Others	18,0	17,67

Country	Company	Basis for anti-dumping duty (%)	Provisional duty (EUR/tonne)
Libya	National Oil Corporation	9,6	8,87
	Others	9,6	8,87
Lithuania	Joint Stock Company Achema	6,5	6,89
	Others	6,5	6,89
Romania	S.C. Amonil SA, Slobozia	4,6	4,94
	Petrom SA Sucursala Doljchim Craiova, Craiova	3,8	4,12
	Sofert SA, Bacau	8,0	8,42
	Others	8,0	8,42
Ukraine	Open Joint Stock Company Cherkassy Azot, Cherkassy	15,3	13,30
	Joint Stock Company DniproAzot, Dniprodzerzinsk	6,5	6,25
	Others	16,1	13,90

(233) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of 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 product originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product 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'.

(234) 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 new production or sales entities) should be addressed to the Commission [1] 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. **Termination with regard to Egypt and Poland**

(235) In view of the results of the investigation concerning Egypt and Poland, and specifically that the countrywide injury margins are *de minimis*, the proceeding should be terminated in respect of these countries. The complainant, having been given an opportunity to comment on this course of action, formally objected to the termination of the proceeding both against Egypt and against Poland. However, no substantive arguments were raised by the complainant that were sufficient to cause the Commission to change its determination.

[1] European Commission
Trade Directorate-General
TERV 00/13
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

4. **Undertakings**

(236) Companies in Bulgaria, Estonia, Lithuania and Romania have offered price undertakings in accordance with Article 8(1) of the basic Regulation. The Commission considers that the undertaking offered by the exporting producer in Bulgaria, Chimco AD, Shose za Mesdra, B-3037 Vratza can be accepted since it eliminates the injurious effect of dumping. Furthermore, the regular and detailed reports which the company undertook to provide to the Commission will allow for effective monitoring. In addition, the company is exclusively producing and selling the product concerned and, as such, the risk of it circumvention the undertaking is limited.

(237) As regards the undertaking offered by the exporting producer in Lithuania, the Commission considered that due to the company being an integrated producer of fertilisers with, therefore, a wide range of marketing options open to it when faced with measures on urea, the monitoring of the undertaking would have proved impractical. In the case of the Estonian company, the accuracy and reliability of the data provided regarding export sales was poor. The offers were not therefore considered acceptable.

(238) As regards the undertaking offered by the company in Romania, the investigation revealed that this company did not export the product concerned during the IP. The offer of this company could therefore not be accepted.

(239) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented to the relevant customs authority, exemption from the duty should be conditional upon presentation of a commercial invoice containing the information listed in the Annex to this Regulation which is necessary for customs to ascertain that shipments correspond to the commercial documents at the required level of detail. Where no such invoice is presented, or when it does not correspond to the product concerned presented to customs, the appropriate amount of anti-dumping duty should instead be payable.

(240) In the event of suspected breach, breach or withdrawal of the undertaking an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation.

G. **FINAL PROVISION**

(241) In the interest of a sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of urea, whether or not in aqueous solution, falling within CN codes 3102 10 10 and 3102 10 90 originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine.

2. The amount of the provisional anti-dumping duty per tonne, applicable to the product described in paragraph 1 above, shall be as follows:

Country	Company	Provisional anti-dumping duty (EUR/tonne)	TARIC additional code
Belarus	All companies	5,46	—
Bulgaria	All companies	18,80	A999
Croatia	All companies	12,18	—
Estonia	All companies	17,67	—

Country	Company	Provisional anti-dumping duty (EUR/tonne)	TARIC additional code
Libya	All companies	8,87	—
Lithuania	All companies	6,89	—
Romania	S.C. Amonil SA, Slobozia	4,94	A264
	Petrom SA Sucursala Doljchim Craiova, Craiova	4,12	A265
	Sofert SA, Bacau	8,42	A266
	All other companies	8,42	A999
Ukraine	Open Joint Stock Company Cherkassy Azot, Cherkassy	13,30	A268
	Joint Stock Company DniproAzot, Dniprodzerzinsk	6,25	A269
	All other companies	13,90	A999

3. 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.

4. 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 [1], the amount of anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

5. Unless otherwise specified, the provisions in force concerning customs duty shall apply.

Article 2

The proceeding concerning imports of the product described in Article 1(1) and originating in Egypt and Poland is herewith terminated.

Article 3

1. The undertaking offered by the company named below in connection with the present anti-dumping proceeding is hereby accepted. Imports under the following TARIC additional code which are produced and directly exported (i.e. shipped and invoiced) by that company to a company in the Community acting as an importer shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are imported in conformity with paragraph 2.

Country	Company	TARIC additional code
Bulgaria	Chimco AD, Shose az Mezdra, 3037 Vratza	A272

2. Imports mentioned in paragraph 1 shall be exempt from the duty on condition that:

(a) a commercial invoice containing at least the elements listed in the Annex is presented to Member States customs authorities upon presentation of the declaration for release into free circulation; and

(b) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.

[1] OJ L 253, 11.10.1993, p. 1.

Article 4

1. Without prejudice to Article 20(1) 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 the entry into force of this Regulation.

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

Article 5

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

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

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

Done at Brussels, 20 July 2001.

For the Commission

Pascal LAMY

Member of the Commission

ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales of urea to the Community which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company mentioned in Article 3(1) 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),
   — description of the goods corresponding to the PCN (i.e 'PCN 1 urea in bulk', 'PCN 2 urea, bagged'),
   — company product code number (CPC) (if applicable),
   — CN code,
   — quantity (to be given in tonnes).
7. The description of the terms of sale, including:
   — price per tonne,
   — applicable payment terms,
   — applicable delivery terms,
   — total discounts and rebates.
8. Name of the company acting as an importer to which the invoice is issued directly by the company.
9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export by [company name] 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 name], and accepted by the European Commission through Regulation (EC) No 1497/2001. I declare that the information provided in this invoice is complete and correct.'