

## COUNCIL REGULATION (EC) No 3319/94

of 22 December 1994

**imposing a definitive anti-dumping duty on imports of urea ammonium nitrate solution originating in Bulgaria and Poland, exported by companies not exempted from the duty, and collecting definitively the provisional duty imposed**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community<sup>(1)</sup>, and in particular Article 12 thereof,

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

Whereas :

### A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EC) No 1506/94<sup>(2)</sup> (hereinafter referred to as the 'provisional duty Regulation'), imposed a provisional anti-dumping duty on imports into the Community of urea ammonium nitrate solution ('UAN') originating in Bulgaria and Poland, and falling within CN code 3102 80 00.
- (2) By Regulation (EC) No 2620/94<sup>(3)</sup>, the Council extended the validity of this duty until 31 December 1994.

### B. SUBSEQUENT PROCEDURE

- (3) Following the imposition of the provisional anti-dumping duty,
  - the Bulgarian exporter, Chimimport, and the Bulgarian producer, Agropolychim Devnia,
  - the Polish exporter, CIECH, and the two Polish producers, Z.A. Kedzierzyn and Z.A. Pulawy,
  - the European Fertilizer Import Association ('EFIA'), and
  - the European Fertilizer Manufacturer Association ('EFMA'), i.e. the complainants,

submitted comments in writing. Parties who so requested were granted an opportunity to be heard by the Commission.

- (4) Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures and the definitive collection of amounts secured by way of a provisional duty. They were also granted a reasonable period within which to make representations subsequent to the disclosure.
- (5) The parties' comments were considered, and the Commission altered its conclusions where deemed appropriate.
- (6) Owing to the complexity of the case, in particular due to the number of producers located in the Community and due to the fact that the Polish producers and exporter, as well as the producers located in the analogous country, were newly operating under market economy conditions, the investigation overran the normal duration of one year provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88 (hereafter referred to as the 'basic Regulation').

### C. PRODUCT UNDER INVESTIGATION; LIKE PRODUCT

- (7) As no comments have been presented by any party regarding the product under consideration and the like product after the imposition of provisional anti-dumping measures, the findings set out in recitals 9 and 10 of the provisional duty Regulation are hereby confirmed.

### D. DUMPING

1. **Bulgaria**
- (8) No new issues were raised by the Bulgarian interested parties concerning the determination of dumping. Therefore, the conclusions reached at the provisional stage are hereby confirmed.

The dumping margin for Bulgarian imports is therefore definitively determined at a level of 33,3 % expressed as a percentage of the free-Community frontier price.

<sup>(1)</sup> OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

<sup>(2)</sup> OJ No L 162, 30. 6. 1994, p. 16.

<sup>(3)</sup> OJ No L 280, 29. 10. 1994, p. 1.

## 2. Poland

### (a) Normal value

- (9) One Polish producer, Z.A. Pulawy ("ZAP"), as for the provisional determination, has submitted that the Commission should base the determination of normal value on the cost of production information specifically prepared by the company for its response to the questionnaire. However, ZAP did not supply any supporting information to show that this information better reflected the company's cost situation than its general cost accounting data.

With respect to certain substantial monthly variations in ZAP's unit cost of production as contained in the company's general cost accounting data, the company submitted supporting documentation after the imposition of the provisional anti-dumping measures. However, the company was not in a position to explain the underlying reasons for the cost variations in any satisfactory manner.

In these circumstances, it is considered that the cost of production information as contained in this producer's internal cost accounting records for the nine months during which the substantial variations did not occur, is representative and that the determination of the constructed normal value at the definitive stage should be based thereon.

### (b) Export price

- (10) One producer, Z.A. Kedzierzyn ("ZAK"), has submitted that adjustments made by the Commission, in the light of the missing and contradictory information received, to certain export transaction prices at the provisional stage in order to take into account commissions paid to the exporter via which the sales transactions were made, were not justified. However, ZAK did not submit any information in support of this claim showing that the approach taken by the Commission at the provisional stage was not appropriate. Therefore, the approach taken at the provisional stage is hereby maintained with respect to ZAK's export price.
- (11) The other producer, i.e. ZAP, has made a submission concerning the completeness of the reporting of its export sales transactions. At the provisional stage, the Commission had not considered the reporting complete on the basis of the information available. However, at the definitive stage, in the light of the additional and conclusive information provided, it is considered appropriate to alter this approach and to base ZAP's export price on the information submitted without making the adjustment made at the provisional stage.

### (c) Comparison

- (12) ZAP has requested that certain adjustments should be made in comparing its constructed normal value

to its export price. It should be noted that such adjustments can be granted in accordance with Article 2 (9) and (10) of the basic Regulation if there are differences affecting price comparability. In such circumstances, any claim must be proved to be justified. ZAP has not submitted any such justification, any quantification of its claim nor any supporting documentation. Therefore this claim has not been accepted.

### (d) Conclusion

- (13) In the light of the approaches and conclusions set out above with respect to the determination of normal value, the export price and the comparison between the two, the dumping margins at the definitive stage expressed as a percentage of the free-at-Community frontier level are set at the following level:

ZAK : 40 %

ZAP : 27 %.

- (14) For the case of any other Polish exporting producer or exporter who failed to reply to the Commission's questionnaire or did not otherwise make itself known, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of the basic Regulation.

In this connection, it is considered that the highest dumping margin determined with regard to a producer which had cooperated in the framework of this investigation was appropriate.

This approach was considered necessary in order not to provide an unacceptable bonus for non-cooperation and to avoid creating an opportunity for circumvention.

## 3. General

- (15) In view of the approach taken with respect to the determination of the normal value for Bulgaria and Poland described above, the Commission considers it necessary to provide for a review of the measures imposed in this Regulation after one year if changes in the production cost structure of the producers located in the exporting countries warrant such a review.

## E. INJURY

### 1. Volume of Community market

- (16) Concerning total Community consumption of UAN, no new information was received after the imposition of the provisional anti-dumping

measures. Therefore the size of this market provisionally established, i.e. 2,8 million tonnes in 1992 as well as in the investigation period measures in UAN with a nitrogen content of 32 %, is hereby confirmed.

## 2. Cumulation of dumped Bulgarian and Polish imports

- (17) Based on Community import statistics, the Bulgarian exporter and the Bulgarian producer have reiterated the argument already put forward at the provisional stage, namely that imports into the Community originating in Bulgaria should not have been cumulated with those of Poland (see recital 32 of the provisional duty Regulation).
- (18) It should be noted that Bulgarian imports of UAN in the investigation period represented a Community market share of about 7 %.

Given the justification provided in the provisional duty Regulation (see recitals (33) and (34) of that Regulation) and the market position reached by Bulgarian imports, it is hereby concluded at the definitive stage that all the elements that justify the cumulation of imports for the purposes of the injury assessment, notably a parallel trend in volumes and prices are present in this proceeding. In particular, neither the level of imports into the Community of UAN originating in Bulgaria or in Poland can be regarded as negligible.

## 3. Volume and prices of dumped Bulgarian and Polish imports

- (19) With respect to the imports concerned, EFIA has submitted that these imports replaced UAN imports from third countries and that overall imports of UAN into the Community declined. Therefore, EFIA has concluded that imports of Bulgarian and Polish origin cannot constitute an injury factor in the assessment of the situation of the Community industry.
- (20) With respect to the situation concerning import volumes as described above, it is noted that an assessment of import volumes alone is not sufficient in order to evaluate the injurious situation of the Community industry. Such an evaluation must also cover the analysis of the prices of these imports. Such an analysis was made for the determination of the provisional anti-dumping measures and it was concluded, as set out in recitals 36 and 37 of the provisional duty Regulation, that the prices of the imports concerned decreased substantially and were at a level substantially below the prices of the Community industry.

## 4. Situation of the Community industry

- (21) Following the adoption of the provisional duty Regulation, EFIA has submitted that the Community industry has not lost market share up to the investigation period. EFIA has concluded that this development is not compatible with the conclusion on the injurious situation reached by the Commission at the provisional stage.
- (22) It should be noted in this context that it is not considered necessary for all injury factors enumerated in Article 4 (2) (c) of the basic Regulation to show a negative trend in order to reach a conclusion that the Community industry has suffered material injury. The Community industry has kept its market share on the Community UAN market in 1992, slightly increasing it up to the investigation period as pointed out in recital 40 of the provisional duty Regulation. However, the stabilization of the market position of the Community industry could be achieved only by a substantial reduction in the Community industry's sales prices (see recitals 38 to 41 of the provisional duty Regulation). It is this price reduction that has led to a substantial reduction of the Community industry's turnover and, ultimately, to substantial financial losses.

## 5. Conclusion

- (23) In conclusion, the significant price depression registered on the Community market and the negative development of the Community industry's financial situation leading to significant financial losses, led the Commission to conclude at the provisional stage that the Community UAN industry has been suffering material injury within the meaning of Article 4 (1) of the basic Regulation.

This conclusion is hereby confirmed.

## F. CAUSATION

### 1. Impact of the imports concerned

- (24) With respect to the causation of the Community industry's injury, EFIA stated that Bulgarian and Polish UAN import prices could not have caused injury to the Community industry. On the contrary, EFIA alleged that pricing behaviour between the companies of the Community industry caused substantial downward price movements and, ultimately, injury to the Community industry. EFIA has stated furthermore that the imports concerned were not substantial enough in volume to influence prices on the Community UAN market.

(25) With respect to the above submission by EFIA, the Commission established that there were variations between the prices obtained by different Community producers. However, as already pointed out in the provisional duty Regulation in recitals 36 and 37, the investigation has confirmed that the imports concerned consistently undercut the Community producers' prices. The detailed analysis of the prices obtained by the Community producers and the exporters' prices showed that the imports concerned did not merely follow price decreases of the Community producers but were consistently made at lower levels. Moreover, EFIA's claim that a combined volume of the UAN imports concerned, which represents 27 % of the Community market, is not sufficient in order to influence prices cannot be accepted, UAN being a commodity type product which is highly price sensitive.

(26) Finally, as far as the injurious situation of the Community industry is concerned, the investigation conducted revealed that the deterioration of the financial situation of the Community industry leading to substantial financial losses in the investigation period coincided with the surge of the low-priced imports concerned. In the light of the above, it is concluded that the imports concerned significantly contributed to the material injury suffered by the Community industry.

## 2. Other factors

(27) EFIA has further argued that a decrease in consumption and demand on the Community fertilizer market was the cause of the Community UAN-industry's problems. Moreover, EFIA stated that the production overcapacity of the fertilizer producers concerned and price decreases for intermediary products of UAN were the reason for the Community industry's injurious situation.

(28) With respect to the above arguments, the Commission notes that, while it cannot be excluded that the development of the Community fertilizer market, the industry's fertilizer production capacity and prices of intermediary products may have had some impact on the general situation of the Community UAN market and UAN industry, this cannot alter the fact that a continuous increase in import volumes of UAN originating in Bulgaria and Poland together with prices which substantially undercut the prices of the Community industry, contributed to, and caused to a large extent, the difficulties which the Community UAN industry faces. Moreover, it has to be pointed out that the claims made by EFIA were largely supported by information referring to the Community fertilizer

market as a whole, while the present anti-dumping proceeding deals specifically with UAN. In that respect, it must be emphasized that, contrary to the development of the market situation for other fertilizer products, the demand situation on the Community UAN market, as shown in the provisional duty Regulation, was relatively stable only showing a slight decrease up to and including the investigation period (see recital 31 of the provisional duty Regulation).

In the light of the above, it is concluded that the arguments and claims put forward by EFIA were based on statistical data which did not reflect the evolution of the UAN market and completely left aside a very significant reason of the Community industry's situation. Therefore, these arguments and claims have to be rejected.

## 3. Conclusion

(29) As no other arguments concerning the causation of the injury sustained by the Community industry were submitted after the imposition of the provisional anti-dumping measures and in the light of the above considerations, it is hereby concluded that the high volume, low-priced dumped imports of UAN originating in Bulgaria and Poland have, independently of other factors affecting the Community industry, caused material injury to that industry, particularly in the form of heavy financial losses.

## G. COMMUNITY INTEREST

(30) EFIA has submitted in this respect, that as the Community interest cannot satisfy the total Community demand of UAN, the imposition of anti-dumping measures limiting the sources of supply is not in the Community interest.

(31) While this argument appears to be in contradiction with the argument put forward by EFIA concerning causality in recital 26 that the Community UAN industry has suffered injury due to its production overcapacity, it must be emphasized in any event that the aim of the imposition of anti-dumping measures is not to prevent imports of the product concerned into the Community. The aim is to eliminate the trade distorting effects of injurious dumping and restore effective competition.

With respect to the various sources of supply available to Community users, there were substantial imports of UAN from other third countries before the substantial increase of the dumped imports concerned, as was pointed out in the provi-

sional duty Regulation (see recital 44). These sources of supply are potentially still available at the present time and there is no reason to believe that a shortage of the product will occur, bearing in mind that the Community market will be potentially more attractive for suppliers from third countries once a fair competitive situation is re-established.

Given that no other arguments concerning the Community interest have been raised after the imposition of the provisional anti-dumping measures, it is hereby concluded that the imposition of anti-dumping measures is in the Community interest.

#### H. ANTI-DUMPING MEASURES

(32) After the imposition of the provisional duties, EFIA has submitted that the imposition of these duties was illegal, given the existence of a consultation clause in the trade agreements concluded between the Community and the two exporting countries.

(33) With respect to the two trade agreements concerned, these provide for the application of anti-dumping measures. Furthermore, the agreements specifically allow the imposition of anti-dumping measures in the case of particular urgency without prior consultation of the other party. It was concluded by the Commission that, given the length of the investigation carried out prior to the imposition of provisional anti-dumping measures and in view of the substantial dumping of exports and the consequent material injury inflicted on the Community industry established by the Commission, provisional anti-dumping measures had to be imposed urgently.

It is therefore confirmed that the course of action taken consequently conforms with the obligations of the Community as foreseen in the trade agreements with the two exporting countries.

(34) Based on the conclusions of dumping, injury, causality and Community interest reached above, consideration was given to the form and level of anti-dumping measures required in order to eliminate the trade distorting effect of the injurious dumping.

In the present circumstances, the overall loss-making situation of the Community industry of UAN had to be taken into account.

(35) Accordingly, the Commission calculated the level of prices at which the Community industry would be able to cover its average costs of production and to obtain a reasonable profit.

As far as the determination of the reasonable profit is concerned, EFMA has claimed that the profit rate used by the Commission in the provisional determination, i.e. at a level of 5 % on turnover, is too low. In particular, EFMA has put forward that such a rate would not allow the Community UAN industry to sustain production of UAN in the Community, that the target price calculated would not allow the Community UAN industry to finance necessary replacement and investment costs and, finally, that the same profit rate should be used in the UAN proceeding as in a previous regional anti-dumping proceeding, namely Commission Decision 94/293/EC<sup>(1)</sup>, concerning imports of ammonium nitrate ('AN'), since AN is one of the two main ingredients of UAN.

(36) As far as the above claim by EFMA is concerned, the Community producers put forward in the response to the questionnaire a variety of profit targets used by the companies internally. These targets varied significantly among companies and in a number of cases were not established specifically for UAN but were the result of an overall group policy in the assessment of investment projects. In these circumstances, the Commission considered at the provisional stage that the Community industry had not specifically supported its claim on the level of a reasonable profit margin. After the provisional determinations, EFMA has supplied no new information.

For the provisional determination, the Commission derived the profit margin used by reference to the fact that the product concerned is a mature product needing only moderate funding for investment and research and development. No information has been received from EFMA justifying a different assessment at the definitive stage.

As far as the comparison with the regional AN case is concerned, the claim put forward by EFMA is not deemed justified. Indeed, the target price calculated in that anti-dumping proceeding took particular account of the production and sales situation of the regional industry concerned, which was not identical to the one of the Community UAN industry. In particular, the profit margin used in the AN anti-dumping proceeding was not applied on the actual costs of production of the industry concerned but on that industry's actual cost of production adjusted to exclude a cost increase during the investigation period due to factors other than dumped imports.

<sup>(1)</sup> OJ No L 129, 21. 5. 1994, p. 24.

In conclusion, the claim put forward by EFMA has not been found acceptable and the profit margin determined at the provisional stage should be maintained for the definitive determination.

- (37) On this basis and taking account of the Community industry's cost of production, a minimum import price was calculated which would permit the Community industry to raise its prices to a profitable level.
- (38) It was established that the injury thresholds thus established are lower than the dumping margins of both producers located in Poland and of the exporter located in Bulgaria, after taking into account all changes made on the basis of the assessments carried out after the imposition of provisional anti-dumping measures.
- (39) Given the material injury suffered by the Community industry in the form of financial losses, in view of the possibility of the absorption of an *ad valorem* duty with a detrimental effect on the price situation in the Community market for this seasonal and highly price sensitive product and given the existence of a number of import channels via third country companies, it is considered appropriate to impose a variable duty at the level which would permit the Community industry to raise its prices to profitable levels for imports invoiced directly by Bulgarian or Polish producers or by parties which have exported the product concerned during the investigation period and a specific duty on the same basis for all other imports in order to avoid the circumvention of the anti-dumping measures.

#### I. UNDERTAKINGS

- (40) Having been informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures, the exporters and producers concerned located in Bulgaria and Poland have offered undertakings. However, the Commission considers only the offer of undertaking jointly made by the Bulgarian producer and exporter as acceptable as only this undertaking would ensure that the injury inflicted on the Community industry was removed by raising the export price to a non-injurious level. In these circumstances, the Commission has considered the offer of undertakings at a lower level by the Polish producers and exporter as unacceptable and has informed the exporters and producers concerned accordingly.

The undertakings offered by the Bulgarian producer and exporter were accepted by Commission Decision 94/825/EC<sup>(1)</sup>.

Notwithstanding the acceptance of the undertaking, a residual duty should be imposed on imports originating in Bulgaria in order to avoid the circumvention of the anti-dumping measures.

#### J. COLLECTION OF THE PROVISIONAL DUTIES

- (41) In view of the dumping margins established, the injury caused to the Community industry and of the latter's precarious financial situation, it is considered necessary that the amounts secured by way of provisional anti-dumping duty for all companies should be collected definitively,

HAS ADOPTED THIS REGULATION :

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of urea ammonium nitrate solution originating in Bulgaria and Poland and falling within CN code 3102 80 00.

2. The amount of anti-dumping duty for imports originating in Bulgaria shall be ECU 20 per tonne product (Taric additional code : 8792) except for imports of the product directly invoiced to an unrelated importer after the entry into force of this Regulation by the following exporters or producers located in Bulgaria :

— Chimimport Investment and Fertilizer Inc., Sofia, Agropolychim, Devnya, (Taric additional code : 8791);

which shall be exempt from the duty subject to the above conditions pursuant to the acceptance of a joint undertaking by Commission Decision 94/825/EC.

3. The amount of anti-dumping duty for imports originating in Poland shall be the difference between the minimum import price of ECU 89 per tonne product and the cif Community frontier price plus the CCT duty payable per tonne product in all cases where the cif Community frontier price plus the CCT duty payable per tonne product is less than the minimum import price and where the imports put into free circulation are directly invoiced to the unrelated importer by the following exporters or producers located in Poland :

— CIECH, Warsaw,  
— Zakłady Azotowe Kedzierzyn, Kedzierzyn,  
— Zakłady Azotowe Pulawy, Pulawy, (Taric additional code : 8793).

<sup>(1)</sup> See page 115 of this Official Journal.

For imports put into free circulation which are not directly invoiced by one of the above exporters or producers located in Poland to the unrelated importer the following specific duty is set:

for the product originating in Poland: ECU 22 per tonne product (Taric additional code: 8794) with the exception of the product certified to be produced by Zakłady Azotowe Pulawy for which the specific duty is ECU 19 per tonne product (Taric additional code: 8795).

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

*Article 2*

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 1506/94 shall be definitively collected in full.

*Article 3*

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

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

Done at Brussels, 22 December 1994.

*For the Council*

*The President*

H. SEEHOFER

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