

COMMISSION REGULATION (EC) No 823/95

of 10 April 1995

imposing a provisional anti-dumping duty on imports of disodium carbonate originating in the United States of America

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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⁽¹⁾, as last amended by Regulation (EC) No 522/94⁽²⁾, and in particular Article 11 thereof,

After consultation within the Advisory Committee,

Whereas :

A. PROCEDURE

- (1) By Regulation (EEC) No 3337/84⁽³⁾ the Council imposed a definitive anti-dumping duty on certain imports of disodium carbonate originating in the United States of America. Two companies offered price undertakings which were accepted by Commission Regulation (EEC) No 2253/84⁽⁴⁾.
- (2) Commission Decision 90/507/EEC⁽⁵⁾ terminated the review of the anti-dumping measures which had entered into force in 1984 concerning sodium carbonate originating in the United States of America, since the United States market share at that time was negligible, though the American producers were found to have dumped by up to 12,8 %.
- (3) In June 1993, the Commission received a complaint lodged by the European Chemical Industry Council (Cefic), acting on behalf of Community producers and representing allegedly 85 % of the Community's sodium carbonate production. The complaint contained evidence that imports of the product concerned originating in the United States of America were being dumped and were causing injury, and this evidence was considered sufficient to justify the initiation of the proceeding.

Subsequently, in August 1993, the Commission announced by a notice published in the *Official Journal of the European Communities*⁽⁶⁾ the initiation of an anti-dumping proceeding concerning imports into the Community of sodium carbonate originating in the United States of America.

- (4) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries and the complainants. Interested parties directly concerned were given the opportunity to make known their views in writing and to request a hearing.
- (5) The exporters and the complainant Community producers made their views known in writing. Submissions were also made by a number of importers. Some of these parties requested and were granted hearings.
- (6) Pursuant to Article 7 (6) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation'), an exporter requested an opportunity to meet representatives of the Community industry. However, no meeting took place as the other parties concerned did not want to attend such a meeting.
- (7) The Commission sought and verified all information it considered necessary for a preliminary determination of dumping and injury and carried out investigations at the premises of the following :

(a) *Complaining Community producers :*

United Kingdom :

— Brunner Mond & Co. Ltd, Northwich ;

Belgium :

— Solvay SA, Brussels ;

The Netherlands :

— Akzo Chemicals BV, Amersfoort ;

France :

— Solvay SA, Paris,

— Rhône Poulenc SA, Courbevoie ;

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 66, 10. 3. 1994, p. 10.

⁽³⁾ OJ No L 311, 29. 11. 1984, p. 26.

⁽⁴⁾ OJ No L 206, 2. 8. 1984, p. 15.

⁽⁵⁾ OJ No L 283, 16. 10. 1990, p. 38.

⁽⁶⁾ OJ No C 213, 6. 8. 1993, p. 12.

Germany :

- Chemische Fabrik Kalk GmbH, Köln,
- Matthes & Weber GmbH, Duisburg,
- Solvay Alkali GmbH, Solingen ;

Italy :

- Solvay SA, Milano ;

Portugal :

- Solvay Produtos Quimicos SA Portugal, Lisbon ;

Spain :

- Solvay SA Spain, Barcelona.

(b) *United States producers/exporters :*

- FMC, Philadelphia-PA,
- Asahi Glass (AG) Soda Corporation-NY,
- General Chemical (Soda Ash) Partners, Parsipanny-NJ,
- North American Chemical Company (NACC), Overland Park-KS,
- Texasgulf Soda Ash Inc., Raleigh-NC,
- Rhône-Poulenc of Wyoming Basic Chemicals Co., Shelton-CT,
- Solvay Minerals Inc., Houston-TX.

(c) *Related importers :*

Belgium :

- Solvay BAP, Brussels ;

The Netherlands :

- Asahi Glass Europe BV, Amsterdam ;

Spain :

- FMC Foret SA, Barcelona ;

United Kingdom :

- General Chemcial (GB) Ltd, Knutsford ;

France :

- Rhône Poulenc SA, Courbevoie.

(d) *Unrelated importers and traders :*

Belgium :

- Zeebrugge Shipping and Bunkering Co. NV, Zeebrugge ;

France :

- Groupe BSN Emballages, Paris,
- Saint Gobain SA, Paris ;

Germany :

- Megachem GmbH & Co. KG, Hamburg,
- Helm AG, Hamburg.

- (8) The investigation of dumping covered the period 1 January 1992 to 30 June 1993.

B. PRODUCT**1. The product**

- (9) The product under investigation is disodium carbonate (soda ash), characterized by the principal component Na_2CO_3 (sodium carbonate anhydrous) and falling within CN code 2836 20 00.

The main uses of the product are in the following industries : glass, steel, chemical, detergent, paper and pulp, food and water treatment.

- (10) Disodium carbonate in Europe is obtained from limestone, sodium chloride and ammonia, a capital and energy intensive process patented by Sovlay in 1865 called the 'synthetic soda ash process' as opposed to the American 'natural soda ash process'. In the United States of America, soda ash is obtained from purification of trona, a mineral found in practically inexhaustible natural deposits situated mostly in the state of Wyoming.

2. Like product

- (11) The end-result of the different production processes described above is, however, the same, and the products obtained are alike in all respects as regards their physical and technical characteristics as well as their potential use. Consequently, the products imported into the Community from the United States of America and the products produced and sold in the Community are like products.

C. DUMPING**1. Normal value**

- (12) The Commission first examined whether the volume of sales of each United States producer on the domestic market attained 5 % of the volume of exports of the product to the Community, which has consistently been considered to be the minimum representative volume for comparison. Six of the seven United States companies which cooperated achieved a percentage of domestic sales considerably in excess of this 5 % threshold, although the Commission found that these had sold substantial quantities of the product (between 30 and 60 % in volume) during the reference period at prices less than the cost of production as defined in Article 2 (3) (b) (ii) of the Basic Regulation ; the cost of production was established according to the method described in recital 15. These sales were not regarded as having been made in the ordinary course of trade and were therefore disregarded in accordance with Article 2 (3) of the Basic Regulation.

(13) Normal values were thus determined on the basis of the profitable sales on the domestic market, after deducting from the sales prices all discounts and rebates directly linked to the sales under consideration, in accordance with Article 2 (3) (a) of the Basic Regulation.

(14) For one exporter, the volume of sales on the domestic market transacted in the ordinary course of trade did not attain 5 % of the volume of exports of the product to the Community since most sales were made to related companies.

(15) Normal value for this company has therefore been calculated in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. It was constructed on the basis of the fixed and variable raw material and manufacturing costs for the product exported to the Community, together with a reasonable amount for selling, administrative and other costs (SGA), and a reasonable margin of profit.

SGA and profit were calculated on the basis of the average figures for domestic sales of the product under consideration by the other companies; the average profit, based upon the profitable sales, amounted to 10 %.

2. Export prices

(16) Where sales were made directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

(17) Where exports made to related importers in the Community, export prices, in accordance with the provisions of Article 2 (8) (b) of the Basic Regulation, were constructed on the basis of resale prices to the first independent purchaser adjusted to take account of all costs incurred between importation and resale together with a 5 % profit margin, which was considered reasonable in the light of the information available to the Commission on the product sector concerned.

3. Comparison

(18) The comparison of the normal value with the export prices on a transaction-by-transaction basis was made at the ex-works stage and at the same level of trade. The Commission, in accordance with Article 2 (9) and (10) of the Basic Regulation, took into account, where this was warranted, the differences directly affecting price comparability, such as certain selling expenses, namely credit

terms, transport insurance and handling costs, packing and ancillary costs.

4. Dumping margin

(19) The comparison showed in the existence of dumping, the dumping margins being equal to the amount by which the normal value, as established, exceeds the price for export to the Community.

(20) The weighted average dumping margins for the companies concerned, adjusted to cif Community frontier prices, customs duty unpaid, are as follows:

— Asahi Glass Soda Corporation :	10,5 %
— FMC :	14,3 %
— General Chemical Partners :	8,1 %
— NACC :	10,2 %
— Rhône-Poulenc of Wyoming :	13,9 %
— Solvay Minerals Inc. :	9,7 %
— Texasgulf Soda Ash Inc. :	0,1 %

(21) In the case of firms which failed to cooperate in the investigation or did not reply satisfactorily to the Commission's questionnaire, the Commission considered that the dumping should be determined on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation. In this respect, the most reasonable facts available were considered to be those verified by the Commission during the investigation and, since the Commission had no reason to believe that the non-cooperating companies would have practised dumping at levels lower than the highest found and in order not to reward non cooperation, a margin of 14,3 % was considered appropriate for those companies.

D. COMMUNITY INDUSTRY

(22) Some United States exporters and the representatives of the major processing industry in the Community, the glass industry, argued that two of the complainant companies were related to United States exporters, had themselves imported American soda ash during the period of investigation and should therefore not be considered as part of the Community industry in the light of Article 4 (5) of the Basic Regulation.

(23) In this respect, it should be recalled that Article 4 (5) does not provide for the automatic exclusion of producers related to the exporters or producers who are themselves importing the allegedly dumped product, but rather imposes on the Community institutions the obligation to examine on a case-by-case basis whether the exclusion of any producer in this situation is warranted.

- (24) Accordingly, the Commission considered whether those two Community producers, were merely supplementing their Community production with an additional activity based on imports, or whether they were importers with relatively limited additional production in the Community. This approach is consistent with the recent case-law of the Court of Justice regarding the definition of 'Community industry'.
- (25) The Commission examined the relationship between the quantities produced in the Community and the quantities imported. On the basis of the facts established in the investigation, it was found that the two Community producers which are related to exporters and are themselves importing from the United States, import relatively low quantities (in one case these imports represented 10 % of the Community producer's production sold in the Community and in the other case less than 1 %). Furthermore, for one Community producer who had bought a United States producer in 1992, existing contracts had to be honoured; imports from this company ceased in 1993. The other producer mainly imports for its captive consumption.
- (26) In these circumstances, it can be concluded that the two Community producers concerned, with corporate headquarters located in the Community, where their commercial policy is formulated and foreign investments planned as a normal business extension of their commercial activities, did not principally act as importers but continued to retain the manufacture of soda ash as their main activity. Given the relatively low quantities imported, these producers cannot be considered to have been shielded against the effects of dumping because of imports.
- (27) In the light of the above, it was considered that there were no grounds for the exclusion of any of the complainant producers from the definition of the Community industry.

E. INJURY

1. Community consumption of soda ash

- (28) Community consumption (based on the replies to the questionnaire as well as Eurostat data) has decreased in recent years from 6 242 000 tonnes in 1990 to 5 963 000 tonnes in 1992 and to 2 840 000 tonnes in the first half of 1993 due both to the general recession which affected especially the glass industry (which is the major processor of soda ash) and to the increase of glass recycling.

2. Exporters' behaviour in the Community market

(a) *Volume of imports and market share*

- (29) The volume of the imports originating in the United States of America rose substantially from 52 000 tonnes in 1990 to 272 000 in 1991, to 578 000 tonnes in 1992 and to 235 000 tonnes for the first half of 1993; representing an increase in market share from 0,8 % in 1990, to 4,4 % in 1991, to 9,7 % in 1992 and 8,3 % for the first half of 1993. This evolution is in sharp contrast with that of the Community industry's sales and market shares (see recitals 32 and 33).

(b) *Prices of United States imports*

- (30) Price comparison between the prices of the Community industry and the exporters concerned was made on the basis of sales of sodium carbonate taken at the same level of trade on the most important markets of the Community during the investigation period. Price calculations concern the actual prices at cif level, all duties included.

The comparison showed undercutting margins on the Community market of up to 15 % for exports from the United States of America. Undercutting was a consistent feature during the whole investigation period, although the prices of the Community producers decreased from the end of 1992 onwards up to the end of the investigation period by about 10 % on average, in order to adjust to the downward price pressure.

3. Situation of the Community soda ash industry

(a) *Production, capacity and utilization of capacity*

- (31) Community production of soda ash fell from nearly 6,8 million tonnes in 1990 to 5,9 million tonnes in 1992 and 2,9 million tonnes in the first half of 1993. Though production capacity fell from 7,3 million tonnes in 1990 to 6,9 million tonnes in 1993, the utilization rate nevertheless decreased from 93 % in 1990 to 81 % in 1993. Given the importance of fixed costs in the soda ash production, this decrease adversely affected profitability (see recital 35).

(b) *Sales volume and market share*

- (32) The quantity of soda ash sold in the Community by the Community producers fell from 6 million tonnes in 1990 to 5,1 million tonnes in 1992 and to 2,5 million tonnes in the first half of 1993.

- (33) Between 1990 and 1993, the Community industry's market share evolved as follows: 96 % in 1990, 92 % in 1991, 85 % in 1992 and 88 % in the first half of 1993. This relative recovery in 1993 has to be seen in the light of the continuous fall in the sales of Community producers in the EU market.

(c) *Price evolution*

- (34) The Community producers' prices, which had remained stable in 1990 and 1991, decreased during the investigation period, especially from 1993 onwards by about 10 % on average.

(d) *Profits*

- (35) The financial situation of the Community producers has deteriorated considerably from profitability in 1990 to losses in the first half of 1993. On a weighted average basis, the situation developed from 13 % profit in 1990 to 10 % profit in 1991, to 3,5 % profit in 1992 and 4,7 % loss in 1993.

(e) *Employment and investment*

- (36) The soda ash industry is not labour intensive. However, there has been a steady reduction in employment from 1991 onwards.
- (37) The level of investment remained significant, because the synthetic production process of soda ash requires continuous renewal of machinery and installations. Furthermore, new and costly investment is mandatory to comply with strict anti-pollution laws. Economies of scale, high capacity utilization and a significant return on investment are important for the Community producers to operate competitively in this capital intensive industry. Though most plants satisfy the economy of scale criteria, all suffered from a decrease in their capacity utilization (see recital 31) notwithstanding a continuous reduction in capacity. During 1993 three smaller production units in Germany and in Belgium stopped their production.

4. The scope of injury

- (38) The representatives of a processing industry, namely the glass industry's 'Comité Permanent des Industries du Verre de la Communauté Économique Européenne' (CPIV), questioned the evaluation of injury with respect to national markets, arguing that strong variations in performance by various companies depending on their location in the Community meant that injury was not being

suffered equally by the Community industry as a whole and that, therefore, injury had to be assessed on a regional basis.

- (39) The Commission cannot accept this argument. The above findings with regard to injury concern the totality of the complaining Community industry, i.e. 90 % of Community production. While differences between the performance of different Community producers existed, they all suffered from the negative developments outlined above. Under these circumstances, conclusions on injury must be drawn for the Community market as a whole. A regional assessment of injury would only be possible under the conditions set out in Article 4 (5) of the Basic Regulation, which are not met here.

5. Conclusion

- (40) In the circumstances, it is concluded that the Community industry suffered material injury within the meaning of Article 4 (1) of the Basic Regulation, characterized mainly by the decline in market share, the deterioration of financial results and employment cutbacks.

The current situation has also forced the Community producers to reduce production and production capacity and in some cases to shut down plants.

6. Causation of injury

6.1. *Causal link between dumped imports and injury*

- (41) The Community soda ash market is a transparent and price sensitive market. In its examination of whether the material injury suffered by the Community industry was caused by the dumping, the Commission found that the increase in dumped United States soda ash imports coincided with a significant loss of market share and reduced profitability for the Community industry. The price erosion on the Community market also coincided with the undercutting of the Community industry's prices by the United States imports.
- (42) In this connection, the Commission notes that the United States exports have a clear interest in extending their position in the Community through active price competition. As explained in recital 12, the United States domestic market is only partly

profitable. As a consequence of stagnating domestic consumption, considerable quantities are available for export. Following the setting-up of new production facilities in China and South Africa however, the United States has practically lost these traditional export markets and encounters increased Chinese competition in the Far East.

6.2. *Effect of other factors*

- (43) Some exporters and the representatives of the major processing industry, the glass industry, claimed that the injury suffered by the Community industry was not due to imports originating in the United States of America but to several other factors: the enhancement of competition between Community producers through Commission Decisions 91/297/EEC, 91/298/EEC, 91/299/EEC, 91/300/EEC and 91/301/EEC⁽¹⁾ relating to proceedings under Articles 85 and 86 of the EEC Treaty (hereinafter the December 1990 Decisions) sanctioning discriminatory practices; the lack of efficiency of the Community soda ash producers; the effects of the recession; the increased use of cullet together with the substitution of caustic soda for soda ash; imports from central and east European countries; and the effect of the dollar fluctuations during the investigation period. It was also claimed that the dumping should be considered unique and transient as it had been necessary in order to establish the United States producers as alternative suppliers on a long-term basis.

6.2.1. The December 1990 Decisions sanctioning discriminatory practices of certain Community soda ash companies

- (44) By Decisions of December 1990, the Commission imposed fines on three Community soda ash producers, thus penalizing infringements of Articles 85 and 86 of the EEC Treaty. The Commission discovered market share agreements designed to restrict competition, exchange agreements, and anticompetitive discount practices like the top slice rebates system. According to United States soda ash exporters and the glass industry, these decisions led to a restructuring in the Community soda ash industry, which affected both prices and volumes; competitive forces were unleashed through the breaking-up of mechanisms that had maintained prices at high levels.

- (45) In order to assess the effect of the December 1990 Decisions in the context of the present anti-dumping investigation, it is necessary to analyse the evolution of prices on the Community soda ash market as well as the trend of intra-Community trade since that date.

This analysis shows that the December 1990 Decisions were not immediately followed by decreases of the average soda ash price in the Community: on average, prices remained stable between 1990 to 1992. One main reason might be that the users' market is concentrated within a few large glass producers which have a considerable bargaining power. The usual practice of negotiating prices on an annual basis may be the reason, at least partly, why prices did not decrease in 1991, but it cannot explain the continuance of price stability in 1992. However, in early 1993, the price decrease was substantial (10 %) and this coincided with the large increase in imports from the United States of America throughout 1992 and first half of 1993, at prices which undercut those of the Community producers (see recital 30). The effect of such pricing behaviour on a commodity market must be considered significant.

It is unlikely that the sudden and substantial price reduction which occurred in early 1993 can be exclusively imputed to the December 1990 Decisions. Between 1990 and the investigation period, trade between Member States in Community-produced soda ash⁽²⁾ increased only at a very moderate rate. The position of the different Community operators on the national markets barely changed in relation to each other. In particular, there was practically no change in the pattern of trade between the United Kingdom and continental Europe.

More specifically, most Community soda ash producers marketed their product in several Member States. No major trend indicating an increase of the tonnages involved in intra-Community 'exports' is discernible from the statistics for the period 1990 to the end of the investigation period in 1993. Given the nature of the product and high land transport costs, most domestic sales are still delivered from local production.

⁽¹⁾ OJ No L 152, 15. 6. 1991.

⁽²⁾ Eurostat figures on intra-Community trade do not distinguish between soda ash originating in the Community and in third countries and give therefore no pertinent indication on that point.

By comparison with imports however, all Community producers, including the companies not concerned with the December 1990 Decisions lost sales volumes in the Community, except one company whose sales remained relatively stable in the period from 1990 to the first half of 1993 as a result of a significant part of its soda ash production being used captively.

As regards to so-called 'top slice rebates', this system consisted of granting additional price reductions to certain important customers for the last 10 % of their soda ash purchases. While these rebates were intended to ensure that a customer bought most or all of the quantities needed from the supplier in question, in practice they were applied only to few purchases in selected markets. The quantities involved were moderate. One United States producer and the glass industry claimed that United States exports merely replaced the quantities previously sold under this rebate system. However, the significant increase in imports of United States soda ash also took place in markets in which 'top slice rebates' were not applied; the imports exceeded by far the sales volume covered by such rebates and negatively affected all Community producers including those which had never used this system. The Commission, therefore, does not consider it a factor which negates the role played by the dumping as a cause for the injury found.

- (46) It was further considered whether the effects of increased competition between Community producers and the alleged inefficiency of some producers had contributed to the injury of the other community soda ash producers. The December 1990 Decisions should normally have benefited the Community producers not concerned by these Decisions, i.e. the long-established alternative suppliers to the producers against which fines were imposed. However, the contrary was the case. The position of these companies worsened after 1992, to the same extent as the position of the undertakings which, had been penalized.

That being so, it appears that the difficulties experienced by the Community soda ash industry cannot be attributed to the effects of the December 1990 Decisions alone.

6.2.2. The overall economic recession

- (47) It is, of course, likely that the decline of Community consumption of soda ash by 4,5 % between 1990 and 1992 and by an additional 5,4 % between 1992 and the first half of 1993 has affected the financial position of the Community producers (see recital 35).

This contradiction of demand was due to the general economic recession as well a specific factors such as the increased use of cullet in the glass industry, the development of bottles and jars that consume less glass (light weighting) as well as the collapse from 1990 of the market in the former East Germany on which Community producers were active.

- (48) While these developments have certainly contributed to the decrease in sales by the Community producers, they cannot explain the increase in the market share of United States soda ash, at the expense of the Community industry. Indeed, the loss of market share of the Community soda ash industry is almost exactly mirrored by the gain of market share by the United States producers. Should the downturn of the Community industry have been caused exclusively by the unfavourable trend of the general economic conditions, the United States imports could not have remained unaffected.

6.2.3. Imports from countries other than the United States of America

- (49) The Commission also considered whether imports from other countries might have contributed to the injury suffered by the Community industry.

In this respect, imports from other countries like Poland, Romania, Bulgaria, the former Czechoslovakia and the former Yugoslavia have increased their market share only slightly (from 2,6 % in 1990 — with a peak of 4,3 % in 1992 — to some 3 % in the first half of 1993). Owing to economic difficulties following political changes in these countries as from 1990, their domestic producers have cut substantially their soda ash production, and exports to the Community have increased only insignificantly. This increase cannot be considered to have had a measurable impact on the Community industry.

6.2.4. Substitution of caustic soda for soda ash

- (50) The impact of the substitution of caustic soda for soda ash been mentioned as having contributed to the worsening of the market situation. However, during the investigation period, caustic soda was priced higher than soda ash and no substitution between soda ash and caustic soda took place.

6.2.5. Exchange rate fluctuations

- (51) Exchange rate fluctuations did not affect prices charged by the United States exporters in the Community. Those prices decreased continuously, even over long periods during which the United States dollar appreciated against Community currencies.

6.2.6. Community soda ash producers' productivity

- (52) Both the glass industry and certain exporters questioned the productivity of the Community soda ash industry.

Synthetic production in the Community involves higher costs than production in the United States. The price differential is, however, significantly lower than the price undercutting practised by the United States exporters during the investigation period if the cost for transporting United States soda ash to the Community is taken into account.

6.2.7. Alleged transient nature of dumping by United States soda ash exporters

- (53) The current and previous investigations (see recitals 1 and 2) into imports of United States soda ash have established that, contrary to assertions from the United States exporters, dumping by those exporters on the Community market was not transient, but systematic. Dumping at significant levels had been found since the 1980's (the 1984 measures were only terminated in 1990 in consideration of the low market share of United States imports, though the United States producers were found to have dumped) and has been confirmed in the present investigation.

6.3 Conclusion

- (54) The Commission found no additional factors other than those mentioned above which could explain

the injury suffered by the Community soda ash industry. The above factors have negatively affected the situation of the Community industry.

They alone, however, cannot explain the full extent of the weakening of its position in terms of decline in market share to the benefit of the United States exporters, and loss of profitability. Clearly, the United States dumped imports have exacerbated the problems with which the Community industry is confronted.

- (55) Accordingly, the Commission concludes that the effects of dumped imports of soda ash originating in the United States of America, taken in isolation, have to be considered as having caused material injury to the Community industry.

F. COMMUNITY INTEREST

1. General considerations

- (56) The elimination of the effect of unfair commercial practices, and the re-establishment of fair competition in trade with the Community is the very purpose of anti-dumping measures and is fundamentally in the general Community interest.

When examining the effect on competition of possible anti-dumping measures in the present case, account has to be taken of the fact that the Community soda ash industry still holds a relatively high market share. In this connection, the following considerations appear relevant:

- (57) The Commission recognizes that the imposition of anti-dumping measures could affect price levels of the exporters concerned in the Community and subsequently may have some influence on the relative competitiveness of their products. Competition on the Community market is not, however, expected to be reduced as a consequence of such measures. On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to prevent the decline of the Community industry and thus to help to maintain the availability of a wide choice of soda ash producers and even to strengthen competition. Indeed, without such measures, the Commission is convinced that the situation of the Community industry would further deteriorate. It should be noted in this respect that several Belgian and German producers ceased operating during 1993.

(58) In this context, the exporters and the processing industry, principally the glass industry as main processors in the Community, have pointed to the December 1990 Decisions which concluded that certain practices of the manufacturers in the Community were anti-competitive (see recital 44).

However, the manufacturers concerned were required to cease such practices forthwith and were obliged, in particular, to change their practice *vis-à-vis* certain competitors both as regards market sharing and in their pricing methods. Furthermore, the situation is under surveillance by the Commission. It can therefore be assumed that normal competitive conditions have been re-established in the Community and that the Community soda ash industry is now more competitive and market-driven than it was before 1991. Consequently, this situation should not be distorted by unfair trading practices.

2. Specific interests involved

(59) The effects of imposing anti-dumping measures on soda ash imported from the United States in relation to the specific interests parties other than the Community industry including the processing industry and consumers have also been considered.

(60) The CPIV, representing the main Community processing industry, alleged that the imposition of duties on imports of soda ash originating in the United States of America would endanger the viability and the competitiveness of the glass industry by impeding access to the Community market of United States material. The glass industry itself has had to face a severe drop in prices for flat and container glass and, as a result, much effort has gone in to improving productivity and to cutting costs. Thus the industry wishes to maintain a high degree of competition in the soda ash sector as this product represents, according to CPIV, a significant part of the total costs of production of glass.

(61) As to the interests of the processing industry, namely producers of glass in the Community, any short-term price advantages have to be viewed against the background of the longer-term effect of not maintaining the widest possible supply base. Indeed, to refrain from imposing anti-dumping measures would maintain a potential threat to the viability of Community manufacturers and a risk of reducing the level of competition, leading to the disappearance of certain of them which would be to the detriment of processors in the Community.

(62) The glass industry claimed that the cost of soda ash has an impact on the cost of flat glass varying from 15 to 20 %, depending on the company. No proof was submitted to corroborate that argument. In examining the effect that anti-dumping duties on imports of United States soda ash might have on the competitiveness of the Community glass industry as the main processing industry, it was found that the cost of soda ash (batch after recycling) represents at most some 8 % of the price of a tonne of glass. This means that the price increase on glass products resulting from the measures proposed, on the assumption that the duties would not be absorbed by United States exporters and would be fully passed on by Community producers in their selling prices, would amount to a maximum of 0,5 %.

These calculations are based on a single product type approach, namely unprocessed flat glass which represents, on average, not more than 20 % of the production of a glass manufacturer. If all glass products (unprocessed and processed) are considered, the impact on the price of glass will be lower (in the order of 0,3 %).

In these circumstances, the anti-dumping duties as an additional cost can be considered a negligible factor in the global economics of the glass industry or for the final consumer of finished glass products.

(63) Furthermore, the glass industry has a considerable bargaining power; this has been emphasized by Commission Decisions 74/292/EEC, 80/1334/EEC, 81/881/EEC, 84/388/EEC and 89/93/EEC relating to proceedings under Articles 85 and 86 of the EC Treaty. All major glass manufacturers belong to groups which are operating worldwide. There is an increased trend for these groups to negotiate their purchasing contracts at a Community or even a worldwide level.

This bargaining power is reinforced by the fact that genuine alternatives to soda ash are today available (cullet in particular).

According to Eurostat, glass imports into the Community have for some years been stable at a low level. This means that glass producers located in the Community face only limited imports on their domestic market from non-Community glass makers and that the impact of those imports on the price level in the Community is not significant. Furthermore, the position of the glass making industry is strengthened by the fact that glass can be replaced by other products only to a negligible degree.

(64) The processing industry considers the United States soda ash as a secondary, competing source of raw material. Nothing indicates that United States soda ash could not continue to play this role just because it ceases to be priced unfairly. At the same time, the processing industry confirmed its reliance on stable and prompt deliveries that only geographically close soda ash manufacturing units can guarantee. It is not in the interest of that industry to allow the availability of such a reliable source of supply to be further reduced or threatened by continued dumping practices.

(65) Accordingly, the Commission concludes that to leave the Community soda ash industry without protection against this unfair competition would not be in the interests of the Community and that the Community interest calls for the imposition of anti-dumping measures.

G. IMPOSITION OF PROVISIONAL DUTIES

(66) One exporter and the CPIV argued that the imposition of a provisional duty in this case was not required as United States imports had fallen after the period of investigation and were therefore no longer causing injury to the Community soda ash producers. They claimed that, pursuant to Article 11 (1) of the Basic Regulation, a provisional duty may only be applied if the interests of the Community call for intervention to prevent injury during the proceeding. For these reasons, there would be no basis for the imposition of provisional duties.

Article 11 (1) of the Basic Regulation provides that where a preliminary examination has shown that dumping exists, and where injury caused thereby is proven and the interests of the Community call for intervention to prevent injury during the proceeding, the Commission shall impose a provisional anti-dumping duty.

The mere fact that the current level of United States dumped imports might have dropped after the period of investigation does not mean that there is no Community interest in the imposition of provisional measures. In view of the exporter's behaviour in previous periods it appears likely that imports from the United States would increase again, should the proceeding continue without such measures being applied. The Commission therefore considers the imposition of provisional measures to be necessary.

H. DUTY

(67) Provisional anti-dumping measures should be established in such a way as to permit the industry to realize the reasonable profit of which it has been deprived through the effects of the dumped imports and to stem the fall in sales. In the present case, it is considered that this result can best be achieved by the imposition of *ad valorem* duties.

(68) In order to calculate the necessary price increase and determine whether a lower duty than the dumping margin should be imposed in accordance with Article 13 (3) of the Basic Regulation, the Commission compared the average free-at-Community frontier import prices of the dumped product, duty unpaid, with the corresponding weighted average cost of production of each of the complainant Community producers, to which was added a profit margin of 6 %. This profit margin was considered, for the purpose of this preliminary determination, reasonable in a situation of shrinking demand for the product concerned and an absolute minimum for guaranteeing the industry investment on a long-term basis. The difference between the average cost and the average import prices has then been expressed as a percentage of the free-at-Community frontier price, duty unpaid. As the resulting percentage expressing the level of injury suffered is in some cases lower than the dumping margins, the anti-dumping duties should be based on this lower level, pursuant to Article 13 (3) of the Basic Regulation.

(69) Accordingly, the following duties should be imposed :

— Asahi Glass soda, New York :	6,7 %,
— FMC, Philadelphia :	14,3 %,
— General Chemical, Parsipanny :	8,1 %,
— NACC, Overland Park :	9,4 %,
— Rhône-Poulenc of Wyoming, Shelton :	5,4 %,
— Solvay Minerals, Houston :	8,8 %,
— Texasgulf, Raleigh :	0,0 %.

(70) In the case of United States producers which failed to cooperate in the investigation, the Commission considered that the duties should be established on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation. It was considered that the most reasonable facts were those established during the investigation and that

there was no reason to believe that any duties lower than the highest duties considered necessary would be sufficient to remove the injury caused by these imports. Therefore, in order to avoid duty circumvention and not to reward non-cooperation, it is considered appropriate to impose the highest duty calculated, namely 14,3 %.

I. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of disodium carbonate falling within CN code 2836 20 00 originating in the United States of America.
2. The rate of the provisional anti-dumping duty shall be 14,3 % of the net, free-at-Community frontier price, before duty (Taric additional code : 8826) except for the following companies for which the rate shall be as follows :

- Asahi Glass (AG) Soda Corporation, New York — NY : 6,7 %, (Taric additional code : 8820)
- General Chemical (Soda Ash) Partners, Parsipanny — NJ : 8,1 %, (Taric additional code : 8821)
- North American Chemical Company (NACC), Overland Park — KS : 9,4 %, (Taric additional code : 8822)
- Rhône-Poulenc of Wyoming Basic Chemicals Co., Shelton — CT : 5,4 %, (Taric additional code : 8823)
- Solvay Minerals Inc., Houston — TX : 8,8 %, (Taric additional code : 8824)

The duty shall not apply to products produced and/or exported by Texasgulf Soda Ash Inc., Raleigh NC (Taric additional code : 8825).

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

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into 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, 10 April 1995.

For the Commission

Leon BRITTAN

Vice-President