

COUNCIL REGULATION (EC) No 449/98

of 23 February 1998

amending Regulation (EEC) No 3068/92 in respect of definitive anti-dumping duties on imports of potassium chloride originating in Belarus, Russia and Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ hereafter referred to as the Basic Regulation,

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

Whereas:

I. PREVIOUS PROCEDURE

- (1) By Regulation (EEC) No 3068/92 ⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia and Ukraine, falling within CN codes 3104 20 10, 3104 20 50 and 3104 20 90 and consisting of the difference between a set minimum price and the net, free-at-Community-border price before customs clearance of the product concerned ('minimum price').
- (2) By Regulation (EC) No 643/94 ⁽³⁾, hereafter referred to as the 'Regulation subject to review', the Council amended Regulation (EEC) No 3068/92 in respect of definitive anti-dumping duties on imports of potassium chloride originating in Belarus, Russia and Ukraine, and changed the form of the measures into a combination of a minimum price and a fixed amount of duty per tonne.

II. REVIEW

- (3) By a notice published on 5 August 1995 ⁽⁴⁾, the Commission, after consultation of the Advisory Committee and in accordance with Article 11(3) of the Basic Regulation, initiated an interim review. The review was initiated pursuant to a request by the International Potash Company (IPC, Moscow), a Russian exporter of potassium chloride on behalf of the following Belarussian and Russian produ-

cers: Production Amalgamation 'Belaruskali' (Soligorsk, Minsk region), PLC 'Silvinit' (Solikamsk, Perm region) and PLC 'Uralkali' (Berezniki, Perm region). The applicant claimed that the accession of Austria, Finland and Sweden had resulted in a change in the circumstances on the basis of which the measures in force had been established. It also submitted that in 1994, export prices had to be based on facts available whereas it was now prepared to cooperate. Finally, it argued that the form of the measures, i.e. the combination of a fixed amount of duty per tonne with a minimum price, should be re-examined since it disproportionately impeded its normal trading activity with the Community. The review was limited to dumping and Community interest.

- (4) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing. The exporter, the representatives of the exporting countries, the Community industry, importers and their association made their views known. All parties who so requested were granted a hearing, namely:
- the Russian exporter IPC,
 - the unrelated importer Kemira Agro Oy, Helsinki, Finland,
 - IPC's related importer Ferchimex N.V., Antwerp, Belgium,
 - the European Fertiliser Import Association EFIA,
 - the European association of potash producers APEP, i.e. the complainant.
- (5) The Commission sent questionnaires to parties known to be concerned and received detailed information from the exporter, two related importers and non-related importers in the Community. Since Canada had been chosen as analogue country, the Commission also sent questionnaires to Canadian companies producing the product concerned and received detailed information from two of them.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).

⁽²⁾ OJ L 308, 24. 10. 1992, p. 41.

⁽³⁾ OJ L 80, 24. 3. 1994, p. 1.

⁽⁴⁾ OJ C 201, 5. 8. 1995, p. 4.

(6) The Commission sought and verified all information it considered necessary for the determination of dumping and the assessment of Community interest. The following importers related to IPC were investigated:

- Ferchimex N.V., Antwerp, Belgium,
- Belurs Handels GmbH, Vienna, Austria.

(7) Interested parties were informed in writing of the essential facts and considerations on the basis of which it was intended to recommend amending the existing measures. They were also granted a reasonable period of time within which to make representations subsequent to the disclosure. The oral and written comments presented by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

(8) The investigation of dumping covered the period 1 July 1994 to 30 June 1995.

III. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product description

(9) The product concerned is potassium chloride (hereafter referred to as potash), generally used as an agricultural fertiliser, either directly — alone or blended with other fertilisers — or after transformation into a complex fertiliser known as NPK (Nitrogen, Phosphor, Potassium). The potassium content is variable and is expressed as a percentage of the weight of the dry anhydrous product represented by K_2O (chemical formula of potassium oxide). This product can generally be found under two different grades: standard or powder grade which, in this case, represents more than 90 % of the imports from the countries concerned, and granular grade. The three basic types of products, based on the K_2O content, are:

- potassium content not exceeding 40 % K_2O — CN code 3104 20 10;
- potassium content exceeding 40 % K_2O but less than or equal to 62 % — CN code 3104 20 50;
- potassium content over 62 % K_2O — CN code 3104 20 90.

(10) The investigation covers all types, although more than 94 % of the imports originating in the countries concerned fall within CN code 3104 20 50, the type which also represents more than 90 % of the potassium chloride sold on the Community market. The investigation also covers both standard and granular grade potassium chloride.

(11) The Regulation subject to review specified different levels of the anti-dumping duty for powder/standard potash and granular potash. This distinction was based on the assumption that there were no other grades than these two. However, the investigation has shown that in a particular case, a volume of potash was imported as being neither granular nor standard grade potash. Therefore, considering that the proceeding covers all types of potash and in order to close any possible loophole, it is considered necessary to distinguish between 'standard grade' and 'other than standard grade' potash, which includes but is not restricted to granular grade.

Moreover, in order to prevent any circumvention of the measures by special mixtures or blends with an unusual high content of potash, which do not fall under the CN codes stated above but can nevertheless be used as potash, these mixtures will also be considered as part of the product concerned under 'other than standard grade' potash.

2. Like product

(12) As in the previous investigations, the Commission established that, since there were no differences in the physical and chemical properties of the different types and qualities of potash, potash produced in Canada, which was chosen as analogue country, could be considered a like product to that exported from the countries concerned, within the meaning of Article 1(4) of the Basic Regulation. In addition, the potash exported from the three countries concerned and the potash produced by the Community producers are alike.

IV. DUMPING

1. Cooperation level

(13) Producers in Belarus and Russia, via their common Russian exporter IPC, fully cooperated with the investigation.

(14) On the other hand, no cooperation was received from Ukraine. The representatives of Ukraine submitted that there was no production or export of potash from Ukraine during the investigation period. They requested that Ukraine be excluded from the countries concerned by the anti-dumping proceeding. However, an examination of the Customs statistics (Eurostat) showed that potassium chloride of Ukrainian origin was imported into the Community during the investigation period. Moreover, information received from several parties

confirmed that there is at least one production site in Ukraine. Under those circumstances, it was concluded that imports of potash from Ukraine should not be excluded from the scope of the present review.

2. Analogue country

(15) Since the countries concerned are non-market economy countries within the meaning of Article 2(7) of the Basic Regulation, normal value had to be based on information obtained in an appropriate market economy third-country in which the product was produced and marketed. In the Notice of Initiation, the Commission suggested Canada as an appropriate analogue country, due to the fact that:

- Canada was the main producer and exporter of potash world-wide, ahead of Belarus, Russia and Ukraine,
- the Canadian domestic market for the product concerned was subject to normal conditions of competition,
- manufacturing process and access to raw materials were, to a large extent, similar in Canada and in the countries concerned,
- Canada had been used in the previous investigations, and the circumstances had not materially changed.

(16) IPC agreed to the choice of Canada as analogue country. It, however, expressed opposition to the possibility that all findings be based only on one of the Canadian companies, namely Potash Company of Canada (hereafter referred to as Potacan), which it claimed was linked to the European producers and would not be representative of the Canadian market. The Commission sought the cooperation of other Canadian producers, and especially of the world's largest potash producer, Potash Corporation of Saskatchewan (hereafter referred to as PCS). Although PCS did not agree to cooperate with the previous investigation, it was now prepared to provide information with regard to the characteristics of mines in Canada, potash prices and transport costs, as well as the organisation of the North American potash market. The information thus obtained and verified was used to cross-check and

confirm the information obtained from Potacan and to calculate average transport costs.

(17) It should be mentioned that the judgment of the Court of First Instance of 28 September 1995 in Case T-164/94, *Ferchimex v. Council* ⁽¹⁾, confirmed that the institutions had not acted illegally in using Canada as an analogue country in the proceedings, or in using information from Potacan.

3. Normal value

(18) As stated above, normal value was calculated on the basis of the data verified at the premises of the Canadian company which cooperated fully with the investigation: Potash Company of Canada Ltd. (Potacan), Toronto, including its producing company the Potacan Mining Company (PMC), Saint John.

(19) The Commission first established whether Potacan's total sales of potash on the Canadian market were representative in comparison with IPC's total export sales of potash to the Community of both Belarussian and Russian origin. In accordance with Article 2(2) of the Basic Regulation, Canadian sales were considered representative when the total sales volume of potash was at least equal to 5 % of IPC's total export sales volume to the Community (so-called 'global 5 % test'). The global 5 % test was fulfilled.

(20) The Commission subsequently examined whether the potash produced and sold in Canada by Potacan could be considered identical or directly comparable to the potash sold for export to the Community by IPC. Potacan's and IPC's standard/powder potash were considered to be comparable products, and so were Potacan's and IPC's granular potash as, within each grade, they had the same chemical properties and physical characteristics.

(21) For each grade of potash sold by Potacan on the Canadian market, i.e. standard/powder or granular potash, the Commission established whether Potacan's sales on the Canadian market were sufficiently representative, within the meaning of Article 2(2) of the Basic Regulation. Canadian sales of a particular type or grade were considered sufficiently representative when the volume of that particular grade of potash sold on the Canadian market by Potacan during the investigation period represented 5 % or more of the volume of the same grade sold by IPC for export to the Community.

Sales of granular potassium chloride (so-called granular muriate of potash, hereafter referred to as GMOP) on the Canadian market were found to be representative.

⁽¹⁾ Case T-164/94, *Ferchimex SA v. Council*, [1995] ECR II-2681.

Sales of standard potassium chloride (standard muriate of potash SMOP) on the Canadian market were found not to be representative. Therefore, and as in the previous investigation, Potacan's SMOP sales to the US market were added to its sales in Canada, as the North American market (hereafter 'Canadian plus US markets') can be regarded as one market for potash. Moreover, SMOP produced by Potacan and sold on the US market was identical to SMOP sold by Potacan on the Canadian market and was therefore a like product to SMOP sold for export to the Community by IPC. Sales of SMOP on the North American market were found to be representative.

- (22) The Commission finally examined whether Potacan's Canadian sales of GMOP and the North American sales of SMOP could be considered as having been made in the ordinary course of trade, by looking at the proportion of profitable sales of the grade in question.

The volume of granular potash sold at a net sales price equal to or above the calculated cost of production (profitable sales) represented more than 80 % of the total sales volume of that grade. For GMOP, normal value was therefore based on the actual Canadian price, calculated as a weighted average of the prices of all sales of granular potash made by Potacan during the investigation period in Canada, whether profitable or not.

The volume of standard potash sold at a net sales price equal to or above the calculated cost of production (profitable sales) represented less than 80 % but more than 10 % of the total sales volume of that grade. For SMOP, normal value was therefore based on the actual North American price, calculated as a weighted average of profitable sales only.

4. Export prices

- (23) IPC was the only exporter which cooperated with the investigation. Therefore, for both Belarus and Russia, export prices were assessed on the basis of the information provided by IPC. Two independent importers, BASF AG, Germany and Kemira Agro OY, Finland, also cooperated with the investigation, and the information they provided was also used to establish IPC's export prices. As for Ukraine, which did not cooperate with the invest-

igation, it was not possible to establish a separate export price and the Commission used the information available, i.e. provided by IPC.

- (24) IPC sold to the Community market partly via two related importers, Ferchimex and Belurs, and partly directly to independent customers.

In all cases where exports of potash were made to independent customers in the Community, the export price was established in accordance with Article 2(8) of the Basic Regulation, i.e. on the basis of export prices actually paid or payable. However, in cases where export sales were made to a related party, the export price was constructed pursuant to Article 2(9) of the Basic Regulation, i.e. 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, at the Community frontier level. Based on the findings of the investigation, a profit margin of 5 % was considered appropriate given the functions performed by the related importers.

- (25) During the investigation period, the majority of potash entered the Community market in the framework of the inward processing regime. Moreover, a large volume of granular potash was put into free circulation in the Community as being neither standard nor granular potash, and therefore under a different Customs heading which did not attract any anti-dumping duty. The investigation showed that this particular batch had in fact been re-sold as regular potash and appeared to be used as such. It was consequently decided to include these sales of potash into the calculation of IPC's export price together with potash for inward processing, because both were covered by the product description as stated in Chapter III.(a) of the Regulation subject to review.

5. 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.

Adjustments were granted when a claim was made within the time limits set for that purpose, and when the party concerned could demonstrate the effect of any alleged difference on prices and price comparability.

(a) *Allowances*

(27) Accordingly, allowances for differences in transport, insurance, handling charges, credit, discounts and commissions have been granted where applicable and justified.

(28) ICP claimed an allowance for physical characteristics between on the one hand, Russian/Belarusian potash and, on the other hand, potash produced in Canada. It alleged that the quality of Russian/Belarusian potash is lower in terms of humidity and presence of dust. The Commission carefully reviewed IPC's arguments but found that the chemical properties and the production processes, including anti-caking treatment, were equivalent for potash produced in Russia, Belarus, and Canada. Therefore, no adjustment could be granted for differences in physical characteristics.

(29) It should be noted that potash is a bulk product with transport costs representing a high percentage of the selling price. In view of the situation whereby there is a significant distance between the Russian and Belarusian mines and their nearest port or nearest frontier, it was decided that the comparison of normal value and export price should be carried out on an ex-mine basis.

(30) IPC had stated that transport costs in Russia/Belarus had increased and were now reaching levels close to market prices. However, since both countries are considered as non-market economy countries, the Commission was not able to use Russian or Belarusian transport costs since it is considered that prices and costs, including transport costs, do not result from normal market forces and are thus not reliable.

(31) On the other hand, transport prices for potash in Canada were found to be market driven and there is competition between rail companies as well as between rail and road. Since Canada is a competitive market, rail fares established during the investigation in Canada were applied to IPC's export price, proportionately to the distance calculated between CIS mines and the ports or frontiers of export. The transport costs thus calculated were deducted from FOB/DAF export prices to make them comparable to normal values calculated at an ex-mine level.

(b) *Adjustments to reflect natural comparative advantages*

(32) IPC requested adjustments to the normal value calculated on the basis of Canada on the grounds that Russian and Belarusian mines enjoyed natural comparative advantages in terms of access to raw materials, production process, proximity of production to customers and special characteristics of the product, i.e. the size of the reserves, the general characteristics of the mines and their geographical location, and finally the characteristics of the ore.

(33) IPC was given the opportunity to present its arguments, and both IPC and the complainant were given various opportunities to comment on each other's submissions. An expert from the Canadian Ministry of Natural Resources Minerals, who had been suggested both by IPC and the Community producers at the beginning of the investigation, was also invited to comment on the issue.

(34) Natural comparative advantages were assessed on the basis of their impact on costs of production and taken into consideration only where this impact could clearly be demonstrated and evaluated in terms of costs. First, the only factors where there seemed to be a clear natural comparative advantage for Russia and Belarus were the depth of the mines and the temperature in the mines, which are of less importance compared to other factors such as the quality of the ore. In addition, as far as the depth of the mines is concerned, IPC could not demonstrate any impact on production costs. Lastly, the only factor for which the impact on costs of production was obvious was the mineral content or the quality of the ore. However, it was concluded that, due to the lower quality of the ore in Russian and Belarusian mines, probably around 50 % more ore is necessary to produce the same volume of potash, which has a considerable negative impact on production costs.

The various factors having been considered and on the basis of the information available, it can be concluded that the natural comparative advantage of the depth of Russian and Belarusian mines is outstripped by the disadvantage of the quality of the ore which has, according to an independent party, a bigger impact on costs. Taken as a whole, it is more likely that Russian and Belarusian mines have an overall natural comparative disadvantage as compared to the Canadian mines.

Therefore, an adjustment for natural comparative advantages for the Russian/Belarus mines as compared to the Canadian mines was not warranted in this case and could therefore not be granted to IPC. The detailed findings of the analysis have been provided to IPC and the Community producers.

6. Dumping margins

(35) A dumping margin was determined respectively for Belarus, Russia and Ukraine. As it was found that prices varied by time period and customers, the weighted average normal value was compared to prices of all individual export transactions to the Community in order to reflect the full degree of dumping being practised.

(a) *Belarus*

(36) Expressed as a percentage of the price 'CIF-Community-border', the margin per grade amounts to:

standard grade: 38,5 %

granular grade: 58,2 %

(b) *Russia*

(37) Expressed as a percentage of the price 'CIF-Community-border', the margin per grade amounts to:

standard grade: 37,1 %

granular grade: 48,4 %

(c) *Ukraine*

(38) In view of the lack of cooperation on the part of Ukraine, a residual dumping margin was calculated on the basis of the facts available, as set out in Article 18 of the Basic Regulation. In order to avoid rewarding non-cooperation, the highest dumping margin calculated for each grade was used, i.e.:

standard grade: 38,5 %

granular grade: 58,2 %

V. INJURY AND CAUSATION

(39) Injury was not reviewed since this investigation was limited to the examination of dumping and Community interest. The findings on injury and causation from the previous investigation consequently remain valid, and the injury margins

unchanged. The Council hereby confirms the findings regarding injury and causation as set out in the Regulation subject to review, as well as the injury elimination levels.

VI. COMMUNITY INTEREST

1. The Community interest investigation

(40) In accordance with Article 21 of the Basic Regulation, in order to evaluate whether the continuation of anti-dumping measures is in the interest of the Community as a whole, the Commission examined the impact which the existing anti-dumping measures have had on the interested parties concerned.

(41) To this end, questionnaires were sent to:

— the complaining industry: Cleveland Potash Ltd (UK), Coposa SA (E), Kali und Salz GmbH (D), SCPA (F),

— the major users of the product concerned in the Community, i.e. fertiliser manufacturers: BASF AG (D), Hydro Agri SA (B), DSM Agro NV (NL), Kemira Agro OY (SF), Kemira Ince Ltd (UK), Kemira SA (B), Kemira Denmark A/S (DK), IFI (IRL), Fertiberia (E), Quimigal Adubos SA (P), Grande Paroisse SA (F), Chemical Industries of Northern Greece SA (GR), Agrolinz Melamin GmbH (A),

— importers of like products (through their representative association EFIA).

Replies were received from:

— three producers, representing over 80 % of total Community potash production in 1996,

— nine fertiliser producers,

— three EFIA members.

As far as potash producers and fertiliser producers are concerned, all but two of the questionnaire responses were complete enough to satisfy the Commission's requirements. The Commission carried out on-the-spot verification visits at seven companies whose questionnaire responses were complete. The companies investigated included three producers and four users of potassium chloride. It is considered that the Commission has therefore verified a significant and representative proportion of Community users and producers, and that clear conclusions can be based on the data gathered.

As for importers, three members (out of 23) of EFIA returned a questionnaire.

2. The potassium chloride market

tonnes (ECU 23,5 million) in 1994, reaching 41 441 tonnes (ECU 10,5 million) by 1996.

(a) *The Community industry*

(42) The Community industry consists of four producers, each owning one or more mining and processing facilities. Being essentially a mining industry, it is highly capital intensive and is characterized by very high levels of investments. As a consequence, the industry is highly sensitive to levels of capacity utilisation, and a reduction in the output leads to an immediate increase in the fixed costs per unit.

(43) In 1996, the Community industry produced 4,7 million tonnes of K_2O equivalent of the product concerned. At the time, this level of production exceeded Community consumption by around 8 %, due to existing exports.

(44) Total employment in the Community industry exceeded 13 000 direct jobs in 1996. Most of these jobs were located in economically disadvantaged regions of Germany, France, England and Spain which are characterised by structural weakness and high unemployment rates.

(45) The market share of the Community industry was 81,3 % in 1996, which is not abnormal for a product for which the impact on the price of transport costs is very high.

(b) *Community consumption of potash*

(46) Community consumption of potash in all forms has been stable in recent years, and was at a level of 4,12 million tonnes of K_2O in 1992 and 4,34 million tonnes in 1996. About one-third (31 %) of Community consumption is generally in the form of granular grade potash fertilisers, i.e. those in the form of potassium chloride (25 %) or potassium sulphate (6 %). The rest (69 %) is in the form of compound fertilisers, associated with nitrates and phosphates (NPK and PK fertilisers).

(c) *Imports of potash into the EU*

(47) The importers, members of EFIA (European Fertilisers Importers Association) represent two very different types of business: trading and bulk-blending, the latter being mainly concerned by granular type of potash.

(48) The volume of imports into the Community from the countries concerned declined from 944 952 tonnes in 1990 (ECU 75 million) to 273 646

(49) The total volume of imports into the Community from third countries increased from 1 097 083 tonnes (ECU 99,3 million) in 1990, to 1 179 871 tonnes (ECU 112,5 million) in 1994, reaching 1 453 125 tonnes (ECU 150,7 million) by 1996.

(d) *The user industry*

(50) The user industry consists of fertiliser manufacturers (who use standard grade potash) and end users i.e. farmers or bulk-blenders (who use granular grade) in the agricultural sector.

(51) Potash is one of the three main nutrients that go into making the NPK fertilisers which represent the biggest part of the output of the Community fertiliser industry. The production process for NPK fertilisers involves transforming the basic nitrates (N) and phosphates (P) components into an NP compound during a series of chemical processes, at the end of which is added the potassium chloride (K). Since most of the added value of an NPK fertiliser is accounted for by the nitrogen component, the relative contribution by the potassium chloride in this final step of the fertiliser production process is not large.

It should be noted that potassium can also be added to the NPK fertilisers in the form of potassium sulphate.

(52) The large-scale nature of the chemical plants required in the production of fertilisers necessarily implies that the user industry is also capital intensive. Of particular note is the extent to which the user industry in the Community has had to make significant investments to conform to the Community's environmental standards.

(e) *Community consumption of NPK fertilisers*

(53) After the reform of the common agricultural policy in 1992, which reduced the Community's total area of farming land, the consumption of fertilisers in the Community has been stable. It should be noted that the data available refer to the total Community consumption of all nutrients (N, P and K), of which NPK complex fertilisers represent about 40 %. The total consumption of nutrients in the Community increased from 15,7 million tonnes in 1992/1993 to an estimated 17,7 million tonnes in 1995/1996.

- (54) The final consumers of fertilisers in the Community are the farmers. These usually acquire their fertiliser requirements through purchasing consortia. The farmer has the choice between using (a) straight fertilisers, (b) blends, which are simple mechanical mixtures of straight fertilizers, or (c) compound fertilizers, in which each granule contains exactly the same quantity and proportion of different nutrients as the others. Straight fertilisers and blends are cheaper than compound fertilisers, but the latter guarantee a higher and constant quality.

The use of fertilisers is seasonal, especially for nitrogen, which is not needed in spring. Fertilisers account for 12 % of Community farmers' costs, of which the share accounted for by potash is 1 % to 2 % of variable costs.

3. The companies investigated

(a) Community industry

- (55) The Community producers' output of standard grade potash was 2 880 Kt in 1992, rising to 4 110 Kt in 1994, falling to 3 930 Kt in 1996 and projected to be 4 050 Kt in 1997. Output of granular grade was 1 030 Kt in 1992, 2 170 Kt in 1994, 2 310 Kt in 1996 and is projected to be 2 320 Kt in 1997. Total production of potash was therefore 3 910 Kt in 1992, 6 280 Kt in 1994, 6 240 Kt in 1996 and is projected to be 6 380 Kt in 1997.

Capacity utilisation worsened between 1992 and 1993, declining from 80 % in 1992 to 77 % in 1993. Since then, capacity utilization has been stable at 84 %.

- (56) Total sales of potash made by the Community producers into the EU rose from 2 564 Kt in 1992 to 3 905 Kt by 1994, and then to 4 127 Kt in 1996 and are projected to reach 4 223 Kt in 1997. Of these, standard grade sales rose from 1 760 Kt in 1992 to 2 455 Kt in 1994, when to 2 702 Kt in 1996 and 2 558 Kt in 1997. Granular grade sales rose from 804 Kt in 1992 to 1 450 Kt in 1994, 1 436 Kt in 1996 and 1 665 Kt in 1997.

(b) Fertiliser manufacturers

- (57) The output of NPK (made of KCl) of the cooperating industry rose from 2 383 Kt in 1992 to 4 112 Kt in 1994, when declined to 3 970 Kt in 1995 and remained the same afterwards.

Capacity utilisation on a weighted average basis was 75 % in 1992, 65 % in 1993 and 78 % in 1994 and has been 80 % since 1995.

4. Effects of the existing anti-dumping measures

(a) Impact on Community producers

- (58) Community producers have benefited from the measures in force. As mentioned above, sales and production improved significantly throughout the period, with some stability being achieved since the imposition of the latest anti-dumping measures at the new higher levels since 1994. Levels of investment also improved, rising from ECU 55 million in 1992 to ECU 136 million in 1994, ECU 207 million in 1995 and ECU 144 million in 1996. On an index basis, the productivity of the Community's producers (measured by the quantity produced per member of staff employed) rose steadily from 100 in 1992 to 121 in 1994 and 134 in 1996 for mining activities, and from 100 in 1992 to 127 in 1994 and to 152 in 1996 for processing activities.

- (59) Despite these indications of a viable performance, however, the information available to the Commission on the weighted average level of profitability on sales shows that, although the financial situation of the Community industry has improved, the Community industry was still making losses on the sales of potash in 1996. Return on sales went from -20,4 % in 1992 to -9,6 % in 1994 but was still at -3,6 % by 1996. After a brief improvement in the figures for employment between 1992 and 1993, when there were 12 500 people employed in the Community industry, there was a continued decline in employment among the Community's producers, the number reaching 10 066 by 1996.

- (60) The Community industry strongly argues that the measures should be maintained. They mention the significant investments made as well as the laying-off of workers to modernise their production facilities. The heavy structure of the industry (impossibility of temporarily shutting down a mine due to too high re-opening costs) as well as its financial situation makes it vulnerable to any downward price development caused by dumped imports.

- (61) As shown above, the Community industry has increased its productivity over the period examined. Total investments of the cooperating producers have also remained relatively stable at improved levels since the introduction of the anti-dumping measures. Exports outside the EU made by the industry have also increased by 55 % since the introduction of the measures (from 1 126 Kt in 1993 to 1 741 Kt in 1996).

These figures demonstrate the competitiveness of the Community industry.

(62) The figures presented above show that the Community industry's market share (80 % in 1993 as against 81,3 % in 1996) did not change significantly following the imposition of the measures. Since the introduction of the anti-dumping measures, its production remained stable at higher levels. As for imports from other third countries, the fact that the major exporting third countries (Canada, Israel and Jordan) increased their exports to the Community from 729 Kt in 1993 to 1 440 Kt in 1996 (this increase being greater than the reduction from the countries concerned after the imposition of the measures) shows that the Community users have not been cut off from alternative sources of supply and that the Community market remained open to fairly-traded imports. In terms of market shares, imports from other third countries increased from 12,7 % in 1993 to 18,2 % in 1996. At the same time, although their annual quantities imported declined, the imports from the countries concerned (Russia, Belarus and Ukraine) still amounted to a total of 421 000 tonnes (ECU 44 million) between 1994 and 1996.

(63) On a weighted average basis, 1996 prices charged by the cooperating Community producers increased *vis-à-vis* 1993 prices by 20 % (standard grade) and 18 % (granular grade). On an index basis with 1993 = 100, the price development of standard grade over the period was 104 in 1992, 100 in 1993, 107 in 1994, 115 in 1995 and 120 in 1996. For granular grade, the development of price on an index basis was 104 in 1992, 100 in 1993, 105 in 1994, 120 in 1995 and 118 in 1996. In this regard, it should be noted that the expected fall in world demand for potassium chloride bring about an overall decrease in prices from 1997 onwards.

(64) Since 1994, losses on turnover for the product concerned have fallen from -9,5 % to -6,5 % (1995) and -3,6 % (1996). The Community industry's financial results show, therefore, that, despite the measures and improved productivity, the profitability on sales of the product concerned has not recovered to break-even levels.

(65) Therefore, despite the benefits it has derived from the anti-dumping measures, the Community industry has remained subject to intense competition from fairly traded imports in an open and transparent market, both at a Community and world level. Although it has improved its results, it

is still in a loss-making situation, which could only deteriorate if exposed to the dumped imports from the countries concerned.

(b) *Impact on users*

(66) The user industry (the fertilisers industry) has faced important changes in past years, the most important of which include the decline in the use of nitrogen-based fertilisers in the Community, and the increased demands made on them to protect the environment. Quantities sold of potash-based fertilisers were 3 736 Kt in 1992, 3 608 Kt in 1993, 3 975 Kt in 1994, 3 566 Kt in 1995 and 3 747 Kt in 1996. During the restructuring which the industry underwent in the period, the numbers employed declined from 2 226 in 1992 to 1 571 in 1996. Profitability improved from 1993, after several years of losses (-10 % return on turnover of the product concerned in 1993, -5 % in 1994 and 1995, -1 % in 1996 and break-even expected for 1997). Investments have behaved erratically, but the general trend has been upwards (ECU 23 million in 1992, ECU 25 million in 1993, ECU 20 million in 1994, ECU 53 million in 1995 and ECU 30 million in 1996).

(67) The user industry has not reported any problems of availability concerning potash. It should be recalled that the industry still imports potash from the countries concerned under the regime of inward processing, allowing it to manufacture fertilisers for the export markets. Although potash is almost a commodity type product in a fairly transparent market as far as the price is concerned, several users pointed out that 'just in time' delivery requirements prevented them from relying too much on sea transported potash (like that originating in the countries concerned), due to the delays inherent in sea freight.

(68) Apart from the notable exception of one large producer which favours the continuation of the measures, the users are generally in favour of removing the measures, as this would to some extent reduce their manufacturing cost. They nevertheless point out that, although the existing measures have an impact on their costs, potash, which represents about 20 % of manufacturing costs, is not a decisive element in this respect. For instance, the impact on their costs of the price of ammonium nitrate and the changes in the economic environment mentioned above are considered to be much more important.

- (69) Farmers are only marginally direct users of raw potash, since the vast majority of them is consuming it in the form of blended or complex fertilisers.

No consumers' or farmers' association has made itself known in the course of the procedure. Since the price of potash increased by 20 % following the imposition of the measures, the Commission argues that the impact on farmers of the anti-dumping duties amounted to an increase of 0,2 % to 0,4 % of their variable cost (assuming that the fertiliser manufacturers pass their own cost increase on to their customers in full). Consequently, it is considered that the impact of the measures on the cost structure of agricultural production can be considered to be marginal.

(c) *Impact on importers*

(i) **Opinion of the traders**

- (70) The importers' association referred to in recital 47 is clearly against the measures, as a result of the alleged closing of the Community market to imports from the countries concerned. It should be stressed that even if imports from the countries concerned did fall as a result of the anti-dumping measures of 1994, imports under the regime of inward processing have continued. More importantly, there are significant imports from countries not concerned.

(ii) **Opinion of the bulk-blender**

- (71) Although the company which reacted was in favour of removing the measures, it also mentioned that it could not rely entirely on imports from the countries concerned.

5. Effects of the removal/alteration of the measures

- (72) Since the circumstances which led to the reinforcement of the measures in 1994 have not substantially changed (including the stagnation of sales in the exporters' home markets), it is very likely that the alteration or removal of the measures would lead to a repeat of the injury experienced by the Community industry prior to the introduction of

the current measures, principally increasing financial losses.

6. Conclusion on Community interest

- (73) In the light of the foregoing, it is concluded that there is no compelling reason to consider the existing measures as being contrary to the interest of the Community. Indeed, the measures imposed in 1994 have had the desired effect, i.e. the removal of the distortions caused by unfair trade, and the resultant overall improvement in the situation of the Community industry.

Despite allegations to the contrary, there is no evidence that these measures have been detrimental to the degree of competition on the Community market, where fairly-traded imports have continued to enjoy open access and have, in fact, increased their market share and they do not appear to have had detrimental effects on the situation of the user industry either.

No detrimental effect on the importer industry has been demonstrated by the investigation.

- (74) It should also be added that there is no evidence that the accession of the three new Member States has given rise to any reason to alter the Commission's findings regarding the interest of the Community in these reviews proceedings.

VII. UNDERTAKING

- (75) IPC made three proposals for an undertaking based on Article 8 of the Basic Regulation.

- (76) The Commission carefully examined these proposals, and rejected them on the ground that the undertakings would not eliminate the injurious effect of dumping. In view of its history, this case requires any offer of undertakings to be treated with caution, and it was apparent that necessary guarantees for the acceptance of an undertaking were not sufficiently present in the offer.

- (77) The exporter was informed of the reasons why its undertakings could not be accepted, and was given the opportunity to comment.

VIII. MEASURES

corresponding type and grade, whichever is the higher,

(78) The present review has shown that the inclusion of the three new Community Member States does not alter the analysis of, nor the conclusions on, the dumping practised by the exporters in the countries subject to investigation; indeed, the dumping margin has changed little since the last examination.

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EEC) No 3068/92 is hereby replaced by the following:

(79) Therefore, it is considered that the form of the measures should remain a combination of a minimum price with a specific duty. However, the minimum prices and fixed duties should be adapted in accordance with the findings of the current investigation.

'Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of potassium chloride falling within CN codes 3104 20 10, 3104 20 50, 3104 20 90, originating in Belarus, Russia and Ukraine.

(80) In application of the lesser duty rule, the proposed anti-dumping duties amount to the fixed amount per tonne of KCl shown below per type and grade, or the difference between the prices shown below and the net, free-at-Community-frontier price per tonne of KCl, before customs clearance for the

2. The amount of duty shall be equal to the fixed amount in ECU per ton of KCl shown below per type and grade, or the difference between the minimum prices in ECU shown below and the net, free-at-Community-frontier price per ton KCl, before customs clearance for the corresponding type and grade, whichever is the higher:

BELARUS

	K ₂ O content not exceeding 40 %		K ₂ O content exceeding 40 % but less than or equal to 62 %		K ₂ O content over 62 %
	Standard	Granular and other than standard	Standard	Granular and other than standard	
TARIC code	3104 20 10*10	3104 20 10*90	3104 20 50*10	3104 20 50*90	
Fixed duty	19,51	30,84	29,51	46,65	48,19
Minimum price	71,35	79,41	107,91	120,11	124,08

RUSSIA

	K ₂ O content not exceeding 40 %		K ₂ O content exceeding 40 % but less than or equal to 62 %		K ₂ O content over 62 %
	Standard	Granular and other than standard	Standard	Granular and other than standard	
TARIC code	3104 20 10*10	3104 20 10*90	3104 20 50*10	3104 20 50*90	
Fixed duty	19,61	26,01	29,65	39,33	40,63
Minimum price	71,35	79,41	107,91	120,11	124,08

UKRAINE

	K ₂ O content not exceeding 40 %		K ₂ O content exceeding 40 % but less than or equal to 62 %		K ₂ O content over 62 %
	Standard	Granular and other than standard	Standard	Granular and other than standard	
TARIC code	3104 20 10*10	3104 20 10*90	3104 20 50*10	3104 20 50*90	
Fixed duty	19,61	30,84	29,65	46,65	48,19
Minimum price	71,35	79,41	107,91	120,11	124,08

3. For the purpose of the application of the anti-dumping duty, potash imported under a form which is neither standard nor granular will be deemed to be granular and will be subject to the anti-dumping duty applicable to granular potash.

4. The provisions in force with regard to Customs duties shall apply.'

Article 2

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, 23 February 1998.

For the Council
The President
R. COOK