

**COMMISSION REGULATION (EC) No 1043/2000**

**of 18 May 2000**

**imposing a provisional anti-dumping duty on imports of glycine originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE**

- (1) On 24 August 1999, the Commission announced, by a notice (hereinafter referred to as 'the notice of initiation') published in the *Official Journal of the European Communities* <sup>(3)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Community of glycine originating in the People's Republic of China.
- (2) This proceeding was initiated following a complaint lodged in July 1999 by the European Chemical Industry Council (CEFIC), on behalf of the sole Community producer of glycine. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The Commission officially advised the complainant Community producer, exporting producers and importers, suppliers and users known to be concerned as well as associations concerned and representatives of the exporting country, of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All parties who so requested were granted a hearing.
- (4) In order to allow producers in the People's Republic of China to submit a claim for market economy status or individual treatment, if they so wished, the Commission sent market economy status/individual treatment claim forms to the Chinese producers known to be concerned.

Claims for market economy status were received from four individual companies and one group consisting of two companies (hereinafter considered as one company).

- (5) The Commission sent questionnaires to all parties known to be concerned. Replies were received from the sole Community producer, the five Chinese companies

that submitted market economy status claims, three Chinese trading companies, one producer in the analogue country and two unrelated importers in the Community. In addition, six users in the Community replied to the questionnaire and provided information which was sufficiently complete and representative to use in the assessment of Community interest.

- (6) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary determination of dumping, injury and Community interest and carried out verifications at the premises of the following companies:

(a) Community producer

— Tessenderlo Chemie SA/NV, Brussels, Belgium

(b) Importers/users

— Scanchem UK Ltd, Macclesfield, United Kingdom,

— Friskies Europe, New Malden, United Kingdom,

— Aventis CropScience, Lyons, France,

— BASF, Ludwigshafen, Germany

(c) Analogue country producer

— Nitrokemia 2000 Rt., Füzfögyártelep, Hungary.

- (7) The investigation of dumping and injury covered the period from 1 July 1998 until 30 June 1999 (hereinafter referred to as 'the investigation period'). The examination of trends in the context of the injury analysis covered the period from January 1995 to the end of the investigation period (hereinafter referred to as 'the analysis period').

**B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

**1. Product under consideration**

- (8) The product under consideration is glycine (amino acetic acid). Glycine is produced in varying levels of purity and is used as a taste enhancer, a buffering agent, a chemical intermediate and a metal complexing agent. There are basically two grades of glycine, depending on the purity: the pharmaceutical or medical grade, and the regular grade. The regular grade can be sold, mainly for marketing purposes, under a variety of names such as technical, normal, pure, industry, food, feed grade, etc.

Glycine is obtained by chemical synthesis, using either (i) hydrogen cyanide (HCN) and formaldehyde or (ii) mono-chloroacetic acid (MCCA) and ammonia.

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

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

<sup>(3)</sup> OJ C 239, 24.8.1999, p. 4.

Certain Chinese companies argued that the different grades of glycine should be considered as separate products but this contention has been rejected. All grades of glycine should be considered as a single product because:

- they have the same basic chemical characteristics in that they share the same basic chemical composition, although they differ slightly in terms of purity (the range of purity starts from 97,5 % for the regular grade and up to nearly 100 % for the pharmaceutical grade; one major impurity being chloride ranging from 0,7 % to 0,007 %). The level of purity for a given grade of glycine is always expressed as a range. It has been found that for different grades of a given producer and for the same grade of different producers these ranges overlap indicating that there is no clear dividing line in terms of purity between the various grades,
- they share the same basic physical characteristics (glycine is a white free-flowing crystalline powder),
- with the exception of pharmaceutical or medical grade, which needs to be accompanied by a certificate of purity (to comply with pharmaceutical regulations), the possible uses of glycine determine the various 'names' of grades. As mentioned above, these names mainly serve marketing purposes for the product concerned but the product is basically the same.

Thus, although there are many different uses of glycine, it is clear that the different grades are almost identical in terms of physical and chemical characteristics and should therefore be treated as one single product.

## 2. Like product

- (9) The product exported to the Community from the People's Republic of China as well as the one domestically sold in the analogue country and the one manufactured and sold in the Community by the Community producer were found to have the same basic physical and chemical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation').

### C. DUMPING

#### 1. Normal value

##### 1.1. Market economy treatment

- (10) Pursuant to Article 2(7)(b) of the basic Regulation, Chinese producers may request that their normal value is determined in accordance with paragraphs 1 to 6 of the said Article, i.e. in accordance with the provisions which apply to market economy countries.

- (11) As mentioned in recital 4, five companies submitted claims for market economy status. The examination of their claims showed that none of the claimant companies met the criteria laid down in Article 2(7)(c) of the basic Regulation.

- (12) One claim was rejected because it was not submitted by the whole group involved in the production and sale of the product but only by one company within the group. Therefore, it was not possible to verify whether the group as a whole merited market economy status. Moreover, the claimant company was subject to restrictions in its buying and selling activities both domestically and for export, indicating that decisions were not taken in response to market signals reflecting supply and demand.

- (13) Another claim was rejected because the claimant was also subject to selling restrictions and its activities were influenced by State interference. Moreover, its accounts were incomplete and contained significant errors and, therefore, could not provide a basis for the establishment of normal value.

- (14) The other three claims were rejected because the companies concerned did not produce the product under consideration. They claimed that they purchased low purity glycine on which they performed a production process which, however, did not change either the chemical composition or the physical characteristics of the product under consideration. As such, they resembled traders of the product under consideration. As only producers can obtain market economy status their claims had to be rejected.

- (15) The Community industry was given the opportunity to comment on the above findings. Moreover, the applicant companies were also informed and given the opportunity to comment on the same findings.

##### 1.2. Analogue country

- (16) In accordance with Article 2(7) of the basic Regulation an analogue market economy third country had to be selected for the establishment of normal value for the People's Republic of China. For this purpose, the Commission proposed India which was also the proposal made in the complaint. Within the time limit specified in the notice of initiation, the Chinese cooperating companies objected to this approach and suggested the use of Hungary. They underlined that the Indian domestic market of glycine was virtually non-existent and that it was strongly protected because of high import duties. In support of Hungary they alleged that it had a sufficiently large production capacity of glycine and was the fourth largest exporter to the Community of the product concerned.

(17) In these circumstances, the Commission contacted producers in Hungary, India and the United States of America. The producers in India and the United States declined to cooperate in the investigation. A Hungarian producer expressed his willingness to cooperate. Hungary is one of the few countries outside the Community and the People's Republic of China where glycine is produced and sold. Hungary is also an open market where glycine is imported as well as exported. On this basis, the Commission decided to use Hungary as an analogue country.

### 1.3. Determination of normal value

(18) Normal value was established on the basis of domestic prices of the Hungarian producer in accordance with Article 2(7)(a) of the basic Regulation. In this respect, it was found that domestic sales of the like product by the Hungarian producer during the investigation period were made in sufficient quantities and in the ordinary course of trade. Normal value was, therefore, established by grade on the basis of the weighted average prices actually paid or payable by independent customers in Hungary.

## 2. Export price

### 2.1. Individual treatment

(19) All five companies that were not granted market economy status applied for individual treatment, i.e. the determination of an individual dumping margin on the basis of their individual export prices. The Commission verified whether these companies enjoyed, both in fact and in law, the necessary degree of independence from the State.

(20) As already mentioned in recital 14, three of these companies were not producers of the product concerned. Since the granting of individual treatment applies only to producers, it is clear that these three companies do not qualify for individual treatment. For the other two companies the absence of interference by the State could not be excluded. One company was not licensed to export and all its exports were made through a trading company controlled by provincial State authorities. For the other company, one of its members was not licensed to export whereas the other was subject to quotas for its domestic and export sales. In addition, all these companies were wholly or majority State-owned. Consequently, it was concluded that all applicant companies did not meet the necessary requirements for individual treatment.

### 2.2. Determination of export price

(21) Since Chinese companies which cooperated in the investigation made exports directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic

Regulation on the basis of the prices paid or payable for these exports.

## 3. Comparison

(22) For the purposes of a fair comparison by grade between the normal value at fob Hungarian frontier level and the export price at fob Chinese frontier level, due allowance was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transport and insurance costs in accordance with Article 2(10) of the basic Regulation.

## 4. Dumping margin

(23) The comparison of normal values and export prices revealed the existence of dumping with regard to imports of the product concerned from all cooperating Chinese companies, the dumping margins being equal to the amount by which the normal value exceeded their export prices to the Community.

(24) In the absence of individual treatment being granted to any of the companies concerned an overall weighted average dumping margin was calculated for the whole of the People's Republic of China. In this respect, the comparison of the data concerning exports to the Community provided by the cooperating Chinese companies and Eurostat import statistics indicated that these exports represented only 71,3 % of total Chinese imports into the Community during the investigation period. Thus, in calculating an overall dumping margin for the People's Republic of China, the Commission based the dumping margin for the volumes for which cooperation was not obtained on the facts available. In this respect, it was considered appropriate to set the dumping margin for these imports at the level of the highest dumping margin established for the cooperating exporter with representative export volumes.

(25) On this basis, the provisional dumping margin for imports originating in the People's Republic of China expressed as a percentage of the cif price at Community frontier level, duty unpaid, was 45,9 %.

## D. INJURY

### 1. Definition of the Community industry

(26) The complainant (CEFIC) acts on behalf of the sole producer of the product concerned in the Community, this producer is, therefore, considered as the 'Community industry' within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(27) As there is only one Community producer, information concerning the Community industry and consumption is only shown in the form of percentage changes, while market shares for all market participants have been rounded.

## 2. Community consumption

(28) Community apparent consumption was established on the basis of the sales volume of the Community industry and Eurostat information on the total imports of the product concerned into the Community.

(29) From 1995 to 1997, consumption, in volume terms, increased by 12 %, then decreased to slightly below 1995 levels in the investigation period. The increase in consumption in 1997 was due mainly to the development in the use of glycine by the petfood industry. In 1998 and during the investigation period, most users slightly reduced their consumption of glycine.

## 3. Imports from the country concerned

### 3.1. Volume and market share

(30) The import volume of glycine originating in the People's Republic of China rose from around 1 300 tonnes in 1995 to 2 500 tonnes in the investigation period, an increase of almost 100 %. Most of this increase took place between 1996 and 1997. Between 1997 and 1998, when Community consumption fell by 9 %, imports of glycine originating in the People's Republic of China increased by a further 4 %, but fell slightly between 1998 and the investigation period.

(31) Nevertheless, during the investigation period, imports of glycine originating in the People's Republic of China reached a market share of significantly more than one third of total Community consumption, double their 1995 market share.

(32) The People's Republic of China is by far the largest exporter of glycine to the Community market. Its share of total import volumes rose from 54 % in 1995 to 84 % during the investigation period.

### 3.2. Prices

#### (i) Price evolution

(33) The weighted average import prices of glycine originating in the People's Republic of China decreased by 23 % from 1995 to the investigation period, to reach a level of EUR 2 292 per tonne.

#### (ii) Price undercutting

(34) Price undercutting was established for the investigation period on the basis of a comparison of Chinese exporter's cif prices, at Community frontier, including post importation costs and customs' duties paid with the Community industry's ex-works prices, at the same level of trade and net of all rebates and deductions. The result of the comparison showed a weighted average price undercutting margin, expressed as a percentage of Community industry's prices, of 24,7 %.

## 4. Situation of the Community industry

### 4.1. Production, production capacity and capacity utilisation

(35) Production over the period 1995 to the investigation period decreased by 17 %. Throughout the analysis period, approximately 5 % of the production of the Community producer was used internally by the company to make other products.

(36) As production capacity was static, the capacity utilisation rate of the Community industry decreased from 58 % to 49 % over the analysis period.

(37) The plant and equipment used by the Community industry is totally dedicated to glycine because it is linked to specific storage, recycling and water treatment machinery that has to comply with high safety and environmental standards. Therefore, it cannot be split or converted to other products. The current capacity level was set in the mid-1980s when a growing demand for glycine was expected.

### 4.2. Sales volume, unit prices and costs

(38) The sales made by the Community industry to unrelated customers on the Community market during the period from 1995 to the investigation period decreased in volume by 17 %. Average net sales prices fell by 3 %.

(39) Total unit costs fell by 9 % between 1995 and 1996, thanks mostly to higher production volumes. In 1997, and again in 1998, however, unit costs increased owing to severe contractions in volumes produced. During the investigation period, even though production continued to decrease slightly, the Community producer was able to reduce its unit costs mainly by improving usage of raw materials, by benefiting from lower prices of MCCA, the major raw material, and by reducing manufacturing overheads.

#### 4.3. Market share

- (40) The Community industry's share of Community consumption decreased by 16 % from 1995 to the investigation period, to reach approximately half of the market. The loss of market share was mostly concentrated between 1996 and 1997; at that time Community consumption grew noticeably, but imports from the People's Republic of China grew even more rapidly and increased their market share. Afterwards, in 1998 and during the investigation period, the Community industry's market share remained fairly stable at its reduced level.

#### 4.4. Profitability

- (41) In 1995, the Community industry made small losses on its sales of glycine, due to high R & D expenditure; in 1996 increasing sales led to a small profit. However, in 1997 and 1998, profitability deteriorated, due to decreasing sales, and losses were again registered. During the investigation period, due to lower unit costs, profitability improved to above break-even, but was still at a level inadequate to ensure the viability of glycine production.
- (42) In this context, certain Chinese exporters argued that the profit situation of the Community industry did not indicate injury. In support of this contention, they cited the profitable levels of prices for pharmaceutical glycine. This argument is not acceptable because, even though pharmaceutical glycine is sold by the Community industry at higher prices than regular glycine, the volumes sold, at less than 5 % of total sales, are so low that their impact on overall profitability is marginal. In any event, it should be noted that in accordance with Article 3(5) of the basic Regulation no one injury factor can give decisive guidance in the analysis of the situation of the Community industry.

#### 4.5. Employment

- (43) The number of personnel directly employed by the Community producer in the production of glycine has decreased by 17 % from 1995 to the investigation period, to reach approximately 50 persons. Approximately 10 other persons, working on general services and maintenance, have also to be taken into consideration.

### 5. Conclusion on injury

- (44) A marked deterioration of the situation of the Community industry has been observed, in particular between 1996 and the investigation period, when quantities imported from the People's Republic of China increased by almost 100 % and doubled their share of

the Community market. During the investigation period, the imports concerned were made at prices significantly below those of the Community industry. From 1996 to the investigation period, the Community industry suffered a reduction in sales volumes, prices, market share and employment levels. Despite a reduction in total unit costs during the investigation period, the revenue generated by falling sales and falling prices was not sufficient to generate profits at levels which would ensure the viability of the Community industry.

- (45) In the light of the above findings, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

### E. CAUSATION

#### 1. Introduction

- (46) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports or whether other factors might have caused or contributed to that injury, in order to ensure that injury from other factors was not attributed to the dumped imports.

#### 2. Effect of the dumped imports

- (47) Prices of imports from the People's Republic of China decreased by 23 % between 1995 and the investigation period, and were the lowest prices of all the significant operators on the Community market. Over the same period, imports from the People's Republic of China nearly doubled in volume and in market share.
- (48) There is a clear coincidence in time between the deteriorating situation of the Community industry, especially the loss of sales and market share, and the volume, prices and growth of dumped imports from the People's Republic of China. This was especially true in 1997 when these imports grew dramatically and prices fell by 8 % from their 1996 level. Several sales agents reported to the Community producer that their clients were being offered much lower prices by Chinese companies.
- (49) As Chinese prices continued to decrease after 1997, efforts made by the Community industry to reduce costs and lower prices did not bring a recovery in market share, sales volume or profitability, which had deteriorated particularly between 1996 and 1997 and remained at a low level until the investigation period.
- (50) It is clear that the dumped imports from the People's Republic of China have caused material injury to the Community industry.

### 3. Other factors

#### 3.1. Imports from other countries

- (51) During the investigation period, imports into the Community from other countries originated mainly in Japan and India. The volumes imported were 10 to 20 times less than those imported from the People's Republic of China, and their shares of total imports were respectively 9 % and 4 %.
- (52) Imports from Japan have fallen by 50 % over the analysis period, while their prices were fairly stable and actually above those of the Community industry. These imports could not contribute to the injury suffered by the Community industry, as they lost market shares and did not contribute to the depression of prices.
- (53) Import volumes from India showed some erratic movements during the analysis period. Even though average import prices have decreased and are quite close to prices of glycine originating in the People's Republic of China, their market share was significantly smaller during the investigation period than in 1995, and, in any case, was so small compared to those originating from the People's Republic of China that they did not have a significant impact on the situation of the Community industry.

#### 3.2. Development of consumption

- (54) In 1997, Community consumption of glycine was 12 % higher than in 1995. This increase was more than absorbed by imports from the People's Republic of China, as the Community industry's sales fell by 5 %, while imports from countries other than the People's Republic of China were down by nearly 20 %.
- (55) Consumption decreased significantly between 1997 and 1998 (-7,4 %) and continued to fall up to the investigation period. However, this decrease only partially contributed to the deterioration of the situation of the Community industry as its sales during this time fell by more than consumption (-10,5 %). In fact, between 1997 and 1998, the volume of dumped imports from the People's Republic of China, despite the negative development of consumption, continued to increase (+ 4 %) and to gain market share.

#### 3.3. Overcapacity

- (56) As explained above, the plant and equipment used by the Community producer is entirely dedicated to glycine, and cannot be adjusted to variations in sales volume. In this respect, the inability to alter capacity can be seen as contributing to the material injury experienced by the

Community industry at a time of decreasing consumption. The Community market was, however, of a sufficient size to have allowed the Community industry to achieve capacity utilisation levels that are profitable, and indeed, in 1996, this was the case.

- (57) In fact, the primary cause of reduced utilisation levels, and thus overcapacity, is to be found in the pronounced effect of the dumped imports from the People's Republic of China on the sales volumes of the Community industry.

### 4. Conclusion on causation

- (58) The investigation has shown that the pricing behaviour of Chinese exporters led to a significant increase in their sales volumes on the Community market; they absorbed all of the increase in Community consumption in 1997, and also gained market share at the expense of all the other suppliers in the Community.
- (59) To resist the pressure imposed by the increased quantities of low-priced imports from the People's Republic of China, the Community industry was forced to decrease its prices while consumption declined from 1997 up to the investigation period. These imports caused reduced production and sales, and, in turn, reduced capacity utilisation and led to unsatisfactory financial results for the Community industry.
- (60) Other factors, such as a reduction in demand from 1998 to the investigation period, imports from India, and the dedicated production capacity also contributed to the negative situation of the Community industry. However, these effects were not such as to break the causal link between dumped imports and injury suffered by the Community industry.
- (61) It is, therefore, provisionally concluded that, considered in isolation, the dumped imports from the People's Republic of China have caused material injury to the Community industry.

## F. COMMUNITY INTEREST

### 1. Preliminary remarks

- (62) In accordance with Article 21 of the basic Regulation, the Commission examined whether the imposition of anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all interests involved, i.e. those of the Community industry, the importers and traders and the users of the product concerned.

- (63) The Commission sent questionnaires to the Community industry, to known or potential industrial users of the product concerned, i.e. to 12 individual companies or groups (in the sectors of petfood, agrochemicals and pharmaceuticals), and to 13 importers/traders. Questionnaire responses were received within the time limits set from one petfood manufacturer, two agrochemical companies, three pharmaceutical companies and two importers/traders.
- (64) The cooperating users represent approximately 40 % of the imports concerned and also approximately 40 % of Community consumption, while the importers/traders represent approximately 40 % of the imports concerned.
- (65) On this basis, it was examined whether, despite the conclusions on dumping, injury and causation, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in this particular case.

## 2. Interest of the Community industry

- (66) As mentioned above, the Community industry consists of a sole producer which suffered material injury caused by dumped imports originating in the People's Republic of China.
- (67) If measures are not imposed on imports originating in the People's Republic of China, it is probable that the Community producer will have to close its glycine production facility, taking into account its present very low profit margins and the financial losses suffered in 1997 and 1998. Indeed, without measures, the price-depressive effect of the dumped imports will continue to outweigh all the rationalisation efforts of the Community industry to achieve a satisfactory level of profitability.
- (68) On the other hand, imposition of measures would enable this industry to maintain and restore the level of its activities in the Community, thus securing the employment of at least 50 persons in a region affected by industrial decline (Limburg in Belgium), and the running of a plant capable of generating a turnover of approximately EUR 20 million a year.

## 3. Interest of importers/traders

- (69) Two importers replied to the Commission's questionnaire. Both opposed anti-dumping measures, which, they stated, would cause them to lose sales because the imported product would be priced out of the market. One of these companies would not be much affected because the product concerned only consisted a small part of its sales. The other, however, would clearly suffer, because the product concerned represented slightly more than a quarter of its turnover and was by far the largest item contributing to its profitability. This

importer argued that, not only would the jobs directly involved be threatened, but the whole company would be endangered if it were to stop importing glycine.

- (70) As the objective of anti-dumping measures is not to prevent imports, but to ensure that they are made at fair prices, it is considered that the risk of imports of the product concerned originating in the People's Republic of China ceasing completely if measures are introduced is very small, especially taking into account the effect of a price increase on the downstream industries described below. Nevertheless, import volumes may decrease after the imposition of measures, and it cannot be excluded that at least one importer will face some negative consequences as a result.

## 4. Interest of users

- (71) There are three major groups of users: the petfood, agrochemical and pharmaceutical industries.

### 4.1. Petfood industry

- (72) The petfood industry is estimated to represent more than 50 % of the Community consumption of glycine. It is a large industry with more than 10 000 employees.
- (73) The investigation has shown that glycine represented less than 1 % of manufacturing costs in this industry. The impact of any anti-dumping duty can, therefore, be deemed as marginal. Competition is, however, very strong in this industry, and it was claimed that other sources of cheap glycine, or even a cheaper substitute, would be sought. This claim was not substantiated, however.
- (74) Users in this industry also expressed concern that glycine might become too expensive if the sole Community producer benefited from a monopoly situation, particularly if duties were so high that Chinese producers were eliminated from the market, as happened on the US market after the imposition of anti-dumping duties there. However, the cooperating petfood producer did in fact recognise that it was important for competition on the Community market to have at least one Community producer. The Community producer's reliability and efficiency in terms of delivery was also acknowledged.

- (75) It was noted that the petfood industry has undergone dramatic restructuring in recent years, leading to the creation of two major players on the Community market with more than half of the market. The buying power of these companies is thus very important in terms of the product concerned, as they account for more than 50 % of the Community glycine market and use global sourcing to negotiate large annual contracts and, therefore, exercise downward pressure on prices.

(76) On this basis, it is considered that the Community petfood industry would face only marginal increases in manufacturing costs if anti-dumping measures were imposed, because glycine represents a very small percentage of total costs. There would thus be little or no effect on employment or investment in this industry.

#### 4.2. Agrochemical industry

(77) The two cooperating companies in this industry represented approximately one quarter of the Community consumption of the product concerned. Total staff employed was less than 100 persons in the two companies considered together.

(78) Both companies opposed the imposition of anti-dumping measures, stating that the product concerned represented a substantial share in terms of raw materials, and a little less than 10 % of their total manufacturing costs (thus significantly less than total costs). They pointed out that any increase in the price of glycine would affect their competitiveness.

(79) One company is using glycine to produce a certain type of vitamin. It stated that the price of its product on the Community market was very low and this was due to competition from producers located in the People's Republic of China. The investigation, however, did not confirm this claim as the competition actually takes place between producers located in western Europe, and imports from the People's Republic of China are regarded as being very marginal. Furthermore, the investigation has shown that the situation on the vitamins market has apparently been made uncertain following investigations and judgments by US anti-trust authorities on an agreement restricting competition between the world's major vitamin-producers. Because the cooperating company in question is already making losses, it may decide to stop this activity. But, in the particular situation of the vitamin-market described above, it is difficult to conclude that the imposition of anti-dumping measures concerning one cost element would be the determining factor. This company also claimed that the Community industry could not deliver glycine in the required packaging format and with a certain necessary additive, but the investigation has not confirmed this claim.

(80) The other company is producing a fungicide described as a mature product, the life expectancy of which depends on the need to reduce costs. This company explained that highly competitive substitutes exist on the fungicide market, and that it was in the Community interest to favour the competitiveness of industries making derivatives of glycine, because they bring more economic benefits and jobs than the Community industry producing glycine.

(81) The Commission noted, however, that the profitability of producing this fungicide increased between 1995 and 1998 and that the company concerned was not able to give precise information on the possible impact of an increase in the cost of glycine owing to the imposition of duties. Furthermore, the glycine originating in the People's Republic of China used was imported under the inward-processing customs regime, and would not be affected by anti-dumping duties. The major problem alleged by this company related to the competition on the Community glycine market that would, the company claimed, be significantly reduced if anti-dumping duties were imposed (see recital 97).

(82) It was concluded that the claims of these two user companies have not been confirmed by the results of the investigation. It has also been found that these companies would face only a limited increase in their manufacturing costs if measures were imposed.

#### 4.3. Pharmaceutical industry

(83) The pharmaceutical industry uses small quantities of glycine (less than 10 % of Community consumption). Pharmaceutical-grade glycine accompanied by a certificate of analysis is mostly used. Most of this glycine is purchased from the Community producer for quality reasons. It is a very small input in terms of volume and cost.

(84) This industry made the point that they were keen to keep a reliable Community producer on the market, but they did not wish to see a monopoly situation develop on the Community market if imports originating in the People's Republic of China were completely discouraged by measures.

(85) It was concluded that the impact on the pharmaceutical industry would be marginal if anti-dumping measures were imposed, as it imports little from the People's Republic of China, and glycine represents a very small share in the manufacturing costs of the downstream products.

### 5. Competition on the Community market and trade distorting effects

(86) Interested parties presented several allegations in this connection:

- anti-dumping measures would leave the Community industry in a monopoly position, able to increase prices to an unjustifiable extent,
- duties would not help the Community industry, as there are plentiful supplies of glycine on the world market that could replace glycine originating in the People's Republic of China,
- the Community industry had tried to protect its position on the Community market through agreements with other major world producers of glycine.



(87) It was noted that the Community producer was indeed the sole producer of glycine in the Community between 1995 and the investigation period, but that imports from various countries represented almost half of Community consumption throughout the period, showing that a strong degree of competition existed. Further, there is no reason to doubt the stated intention of the Community producer that, if measures are imposed, it would improve its situation by increasing its sales volumes in order to raise capacity utilisation and reduce unit costs, rather than by increasing prices. In addition, the Commission does not consider that, in the circumstances of the present investigation, the introduction of anti-dumping measures would lead to the sole Community producer being able to exercise monopoly power on the Community market: the market would remain open to imports at fair prices. The loss of Community production due to injurious dumping, however, would leave exporting producers in the People's Republic of China in the position of being able to supply over 80 % of Community demand, owing to the large amount of spare capacity that exists in the People's Republic of China, leading to a quasi-monopoly situation.

(88) As to the replacement of imports from the People's Republic of China by glycine from other sources, this is unlikely to happen, due to the fact that glycine produced in the USA, in Japan or in Hungary is approximately as costly as the one produced in the Community. Imports originating in these countries are only expected to recover their position prior to the arrival of dumped imports on the Community market. As to the cheap glycine produced in India, it seems that it is not able at the moment to meet the requirements of Community users. Indeed imports from India were very small during the investigation period.

(89) The allegation concerning agreements with other major world producers was not supported by any evidence, and the investigation did not point to the existence of such agreements.

#### 6. Conclusion on Community interest

(90) Inevitably, any price rise resulting from anti-dumping measures tends to increase the costs of the downstream industries. However, this increase is estimated by the Commission services to be marginal for the companies cooperating in this investigation, apart from one user producing a certain type of vitamin, which has separate concerns.

(91) The potential number of job losses which would result from closure of the Community industry or the Community user most concerned are roughly comparable. However, the vitamin industry is in fact emerging from a post cartel situation, and the outcome of this

investigation can, in any event, be considered as marginal in the restructuring this industry has to face.

(92) On balance, it cannot be clearly concluded that the imposition of anti-dumping measures is not in the Community interest, as it is considered that the benefit of removing the unfair elements of the dumped prices of glycine originating in the People's Republic of China by the imposition of anti-dumping measures outweighs the possible negative effects on downstream industries. This conclusion took into account, in particular, the fact that the cessation of glycine production by the Community industry is likely if measures are not imposed and, in the long term, this would be detrimental to the interests of users of the product under consideration.

(93) Given the above, it is provisionally concluded that there are no compelling reasons to consider that taking measures would be against the overall interest of the Community.

#### G. PROVISIONAL MEASURES

##### 1. Injury elimination level

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

(95) For the purpose of determining the level of these measures, account has been taken of the level of the dumping margin found, and of the amount necessary to eliminate the injury sustained by the Community industry. As the injury consists principally of a reduction in profitability from 1997 onwards and a loss of market share, the removal of such injury requires that the industry should be able to increase sales volume and revenues. To achieve this, prices of imports of the product concerned originating in the People's Republic of China should be increased to a non-injurious-level. To this end, the Commission determined a non-injurious price based on the production costs of the Community industry, together with a reasonable profit margin (6 %), this being considered necessary to ensure the viability of the industry and to represent a profit which this industry could expect in the absence of dumped imports. This non-injurious price was compared with the prices of the dumped imports used to establish undercutting. The differences between these prices (on a weighted average basis and expressed as a percentage at cif Community frontier level duties unpaid) showed an injury elimination level of 39,7 %.

(96) As the injury elimination level is lower than the dumping margin established, the provisional measures should be based on the former.

## 2. Form of the measures

- (97) Given that the investigation has shown that prices of glycine originating in the People's Republic of China were still decreasing after the investigation period, there is a risk of absorption of an *ad valorem* duty and therefore a specific amount duty of EUR 910 per tonne is considered the most appropriate measure.

## 3. Final provisions

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

HAS ADOPTED THIS REGULATION:

### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of glycine falling within CN code 2922 49 10 originating in the People's Republic of China.
2. The amount of duty applicable is EUR 910 per tonne.
3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs

value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 <sup>(1)</sup>, the amount of anti-dumping duty, calculated on the basis of the fixed amounts set out above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

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

### Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96 interested parties may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

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

### Article 3

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

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

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

Done at Brussels, 18 May 2000.

For the Commission  
Pascal LAMY  
Member of the Commission

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