II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 April 1994

accepting undertakings given in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Lithuania and Russia and terminating the investigation with regard to these countries; as well as terminating the anti-dumping proceeding concerning imports of ammonium nitrate originating in Belarus, Georgia, Turkmenistan, Ukraine and Uzbekistan

(94/293/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], as last amended by Regulation (EC) No 522/94 [2], and in particular Articles 9 and 10 thereof,

After consultations within the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In July 1992 the Commission received a complaint lodged by the Fertilizer Manufacturers' Association (FMA) on behalf of the producers representing the whole production of ammonium nitrate in the United Kingdom (UK), concerning imports of ammonium nitrate originating in Belarus, Georgia, Lithuania, Russia, Turkmenistan, Ukraine and Uzbekistan. The complaint contained evidence that imports originating in these countries had been dumped and had caused material injury to a Community industry, in this case the producers in the UK, which allegedly constituted a separate competitive market as provided for in Article 4 (5) of Regulation (EEC) No 2423/88. The evidence contained in the complaint was considered sufficient to justify the opening of an anti-dumping proceeding.

(2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports of ammonium nitrate originating in Belarus, Georgia, Lithuania, Russia, Turkmenistan, Ukraine and Uzbekistan, falling within CN codes 3102 30 90 and 3102 40 90, and commenced an investigation.

(3) The Commission officially so advised the exporters and importers known to be concerned, representatives of the exporting countries and the complainant UK producers. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

(4) Certain exporters, importers, traders and all the complainant producers made their views known in writing.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 66, 10. 3. 1994, p. 10.
[3] OJ No C 306, 24. 11. 1992, p. 2.

(5) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination of dumping and injury and carried out investigations at the premises of the following:

(a) *Community producers*

— ICI Fertilizers, Billingham, Cleveland, UK,

— Kemira Agro UK Ltd, Ince, Cheshire, UK,

— Hydro Fertilizers Ltd, Immingham, South Humberside, UK;

(b) *Importers*

— Conagra Resources Europe Ltd, Tiverton, Devon, UK,

— Fertibo Holland NV, Oudenbosch, Netherlands,

— Kali (UK) Ltd, Sawbridgeworth, Herts, UK,

— London Chemical Co. Ltd, London WC2, UK,

— Usborne Grain Ltd, Winchester, Hants, UK;

(c) *Traders*

— International Polysacks, Viernheim, Germany;

(d) *Producers in non-member countries*

(i) Arcadian Corporation, Memphis, Tennessee, United States of America;

(ii) A producer of ammonium nitrate in Hungary, the identity of which cannot be revealed for reasons of confidentiality.

(6) The investigation of dumping covered the period from 1 January 1992 to 30 September 1992 (the investigation period).

B. COMMUNITY INDUSTRY AND REGIONAL CRITERIA

(7) The UK producers on behalf of which the complaint was lodged accounted for 100 % of UK production of ammonium nitrate. They sold almost all their production in the UK, and demand in the UK was not to any substantial degree supplied by producers located elsewhere in the Community. In addition, imports into the Community of ammonium nitrate originating in the countries named in the complaint were concentrated on the UK market.

(8) Given the above exceptional circumstances, the Community is, for the production in question, divided into two or more different competitive markets, as provided for in Article 4 (5) of Regulation (EEC) No 2423/88. One of these is the UK market, and producers within this market are regarded as a separate Community industry.

(9) Therefore the Community industry allegedly being injured refers to that represented by UK producers.

(10) Several importers argued what Hydro Fertilizers Ltd should be excluded under Article 4 (5) of Regulation (EEC) No 2423/88 from the Community industry, as defined for this proceeding, because it was related to an importer of allegedly dumped imports from Russia, Fertrachem Ltd.

(11) It was established that Fertrachem had imported a small quantity of ammonium nitrate of Russian origin in the investigation period. However, the Commission did not consider that the Fertrachem imports warranted the exclusion of Hydro Fertilizers from the Community industry, since the imported quantities were equivalent to less than 0,5 % of the UK market and were imported by Fertrachem solely in order to defend its market position as a distributor against a very large volume of low priced imports from Russia and Lithuania. Such a low level of imports could not have shielded the UK producer concerned from the effects of dumping nor have been any substantial benefit to it.

(12) Certain importers also alleged that Hydro Fertilizers Ltd and Kemira Agro UK Ltd should not be considered part of the Community industry, since they were both part of State-owned companies of countries outside the Community. The Commission considered that this argument was without foundation. Both companies were established limited companies producing ammonium nitrate in the UK; their ownership was irrelevant with regard to their inclusion in the Community industry, to the extent that they were not related to the exporters involved in the proceeding.

(13) It was also argued that certain UK producers should be excluded from the Community industry because they imported ammonia (a raw material for ammonium nitrate) from Russia or Lithuania during the investigation period. One UK producer did indeed import small quantities of ammonia from Lithuania. However, this had no effect on its

standing as a Community producer because ammonia and ammonium nitrate are different products.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(14) The product concerned is ammonium nitrate, which is a fertilizer produced in prill or granular form, containing between 33 and 35 % nitrogen plant nutrient.

(15) The ammonium nitrate produced by the UK industry is a like product as regards physical and technical characteristics to the ammonium nitrate exported to the Community by Russia and Lithuania.

D. DUMPING

(a) Imports during investigation period

(16) During the investigation period, there were imports of ammonium nitrate originating in Russia and Lithuania made into the UK. However, there were no imports origintating in Belarus, Georgia, Turkmenistan, Ukraine or Uzbekistan during this period, and therefore no calculation of dumping could be made with regard to these countries.

(b) Normal value

(i) *Analogue country*

(17) Since the exporting countries involved are non-market economies, normal value had to be based on prices or costs in an analogue country.

(18) The complainant suggested Canada as an appropriate analogue country, one of the exporters (Jonava Azotas, Lithuania) proposed Hungary, and one of the importers (Fertibo, Netherlands) suggested that the United States of America should be used.

(19) The Commission wrote to all the known producers of ammonium nitrate in these countries in order to request their cooperation in the investigation and asked them to complete a questionnaire.

(20) The following producers replied to the Commission's questionnaire :

— Simplot Canada Ltd, Brandon, Manitoba, Canada,

— Arcadian Corporation, Memphis, Tennessee, United States of America,

— A producer in Hungary (identity withheld for reasons of confidentiality).

(I) Canada

(21) The investigation revealed that although ammonium nitrate is produced and sold in Canada by Simplot Canada, the quantity of this company's domestic sales is extremely small compared to the volumes exported from Russia and Lithuania to the UK.

(22) It has been established that ammonium nitrate is something of a niche product in the Canadian market, since it is rarely used as a straight fertilizer. The vast majority of Canadian ammonium nitrate is used in solutions or for explosives. In contrast, its use in Russia, Lithuania and in the UK market is mainly as a straight bulk fertilizer. In addition, the level of import penetration in Canada is extremely low for this product, partly because regulations prohibit its transport on inland waters. For these reasons, it was decided not to base normal value on prices or costs in Canada.

(II) United States of America

(23) The domestic sales of Arcadian Corporation (USA) during the investigation period were significant in comparison to the volume of the exports from Russia and Lithuania to the UK. It should be noted, however, that the USA product is sold domestically in bulk, while the Russian and Lithuanian exports are bagged. The United States of America is an open and competitive market for ammonium nitrate, with several domestic producers and a significant level of imports (imports account for over 20 % of domestic demand).

(III) Hungary

(24) Hungary is considered a market economy for anti-dumping purposes. During the investigation period, Hungary was a competitive market for ammonium nitrate, with two domestic producers and a large share of imports (30 %), mostly from the CIS countries. The cooperating Hungarian producer kept accounts according to standard accounting practices which enabled the costs to be reliably determined for the purpose of calculating constructed normal value. In addition, ammonium nitrate was produced at the normal rhythm during the investigation period. Domestic sales, although lower than in previous years, were significant when compared to the volume of exports from Russia and Lithuania to the UK.

(ii) *Selection of analogue country*

(25) Both United States of America and Hungary were open markets for significant volumes of ammonium nitrate during the investigation period with similar access to raw materials. The Commission considers that Hungary, since its production environment is similar to that in Russia and Lithuania and since the accounting information provided by the cooperating producers in this case was reliable, is an appropriate and not unreasonable choice of analogue country.

(iii) *Determination of normal value*

(26) The domestic selling prices of the Hungarian producer during the investigation were found not to cover all costs incurred. Normal value was therefore based on the constructed value of the Hungarian producer during the investigation period, calculated on the basis of cost of production (including selling, general and administrative expenses and finance costs) plus a profit margin of 8 % on cost of sales, considered as reasonable for this sector in the light of the results of the investigation.

(c) Export price

(27) The investigation has shown that, of the countries mentioned in the complaint, only ammonium nitrate originating in Russia and Lithuania was imported into the UK during the investigation period. The export price with regard to these two countries was based on the price paid to the exporters for the product sold for export to the UK. This was normally a FOB price charged by the exporter to an agent or importer, not always located in the UK, but who subsequently resold the goods to a UK customer.

(d) Comparison

(28) The comparison between normal value (ex-works) and export price (ex-Russian or Lithuanian frontier) was made on a transaction-by-transaction basis at the same level of trade. In the case of each transaction, the export price was lower than the normal value.

(29) Normal value was adjusted to take account of certain selling expenses specified in Article 2 (10) (c) of Regulation (EEC) No 2423/88. Since the Hungarian product is sold on an ex-works basis, a deduction was made only for credit expenses.

(30) There are no substantial physical or technical differences between the Hungarian product, used to establish normal value, and the product exported from Russia and Lithuania. They are therefore like products.

(e) Dumping margin

(31) The dumping margins, expressed as a percentage of the CIF price at the Community frontier, were 40,6 % as regards imports originating in Russia and 34,4 % as regards imports originating in Lithuania.

E. INJURY

(a) Market analysis

(i) *Total UK consumption and market share of dumped imports*

(32) UK consumption of ammonium nitrate declined from 2,05 million tonnes in 1989 to 1,89 million tonnes in 1991, a fall of 7,8 %, and during the investigation period (January to September 1992) it dropped by a further 8,15 % compared to the same period in 1991, the tonnage falling from 1,26 to 1,16 million.

The market share of dumped imports originating in Russia and Lithuania increased from 0,08 % in 1989 to 7,4 % in 1991, and then to 16,5 % during the investigation period.

(ii) *Volume of dumped imports*

(33) Imports from Russia and Lithuania increased from 1 700 tonnes in 1989 to 139 200 tonnes in the full year of 1991, and then more than doubled during the investigation period to 191 700 tonnes (up from 91 900 tonnes in the first nine months of 1991).

(iii) *Prices of dumped imports*

(34) The Commission compared the average UK selling price of the imports from Russia and Lithuania with the average UK selling price of the UK producers, both at the level of distributors. All prices were compared at a net level, excluding all discounts and rebates. Certain importers alleged that the UK producers' average price of £96,30 was too high because it did not exclude all discounts and rebates, but the Commission, after careful re-examination of the facts, confirmed that this price was accurate.

(35) On this basis, it was found that during the investigation period the Lithuanian and Russian imports were sold on average at 13,4 % and 18,1 % respectively below the price of the UK producers.

(36) The market in the UK dictates the fact that imports will, even in conditions of normal competition, always have to be offered at a price below that of the domestic product in order to sell. Russian and Lithuanian ammonium nitrate is perceived by farmers to be of a lower quality than the UK-produced product, a perception which is reinforced by advertisements put out by the UK manufacturers to this effect, and importers cannot offer the same security of supply as domestic manufacturers nor the same service to customers. Therefore, there will normally be a price gap between the UK product and the Russian or Lithuanian imports. On the basis of the information obtained in the investigation, the Commission considers this to be £8 per tonne.

(37) The complainant claimed that a figure of £5 would be more appropriate. However, it provided no evidence to justify its proposal.

The Commission, in arriving at the gap of £8, had taken particular note of a verification at one importer, which sold both Russian ammonium nitrate and a brand of another Community producer (non-UK). In this case, the Community brand was sold with a premium in excess of £8 over the Russian product. Since the price gap varies quite widely by region and type of customer, the Commission concluded that £8 was a reasonable average.

(38) Therefore, after taking account of the normal premium available to domestic producers over imports, the Lithuanian and Russian imports were still sold at about 5 % and 10 % respectively below the price of the UK producers.

(b) Cumulation of dumped imports

(39) In establishing the impact of the dumped imports on the UK industry, the Commission has considered the effect of dumped imports from both Russia and Lithuania. Cumulation is appropriate here, because :

(I) the volume of imports originating in both Russia and Lithuania is significant. The investigation established that roughly the same quantity of ammonium nitrate was imported into the UK from both countries during the investigation period ;

(II) the physical characteristics of the ammonium nitrate from both countries are similar,

(III) the Russian and Lithuanian products are in competition in the UK with each other and with the like product produced by the UK industry ;

(IV) the Russian and Lithuanian products use the same type of distribution channels in the UK and the price behaviour of the exporters of both countries in the UK is broadly similar.

(c) Situation of the UK industry

(i) *Production*

(40) UK production of ammonium nitrate increased from 1,82 million tonnes in 1989 to 2,06 million tonnes in 1991. Production then fell by 29 % during the investigation period to 1,14 million tonnes. One UK producer had to shut down production completely for part of this period. On an annual basis, this level of production was 20 % below the production level of 1989.

(ii) *Capacity utilization*

(41) The UK producers reduced production capacity by 12 % from 3,11 to 2,74 million tonnes between 1989 and 1991, and by a further 6 % during the investigation period. In view of the decline in production, capacity utilization stood at 58 % in both 1989 and the investigation period, but this represented a sharp decline on 1991, when utilization stood at 75 %, having increased substantially since 1989.

(iii) *Stocks*

(42) The UK producers' stocks increased fourfold from 126 300 tonnes in 1989 to 502 700 tonnes at the end of the investigation period.

(iv) *Sales*

(43) Between 1989 and 1991, the domestic sales of the UK producers to independent customers fell from 1,57 to 1,45 million tonnes, a decline of 8 %. During the investigation period, sales dropped much more sharply, falling by 24 % from 915 000 to 697 000 tonnes.

(v) *Market share*

(44) The domestic market share of the UK producers remained stable at 76 to 78 % during the period 1989 to 1991, then fell to 60 % during the investigation period (down from 72,4 % during the corresponding nine months of 1991).

(vi) *Prices*

(45) The average domestic net selling prices of the UK producers to all independent customers (wholesalers and retailers) rose from £ 107,50 per tonne in 1989 to £ 108,10 per tonne in 1990, but subsequently declined to £ 100,60 during the first nine months of 1991 and then dropped by a further 3 % to £ 97,50 during the investigation period.

(vii) *Profitability*

(46) Between 1989 and 1991, the UK producers averaged a profit margin of 11 % on turnover, with profits increasing from 7,8 % in 1989 and 16,1 % in 1990, before falling back to 8,3 % in 1991. The financial results achieved by the UK industry deteriorated during the investigation period when the producers suffered a loss equivalent to 1,7 % of turnover. The loss resulted not only from the drop in prices but also from a sharp increase in unit production costs.

The Commission considers that this industry requires a minimum profit margin of 10 % on cost in order to remain competitive, and to cover the costs of new investment.

(viii) *Employment*

(47) The number of people employed by the UK producers in the ammonium nitrate sector fell by 20 % between 1989 and 1991, and by a further 5 % during the investigation period.

(d) Conclusion

(48) It is clear that the situation of the UK industry has deteriorated between 1989 and the end of the investigation period. The development of most of the main indicators was negative.

(49) With regard to the extent of the injury suffered, the period can be divided into two parts. Between 1989 and 1991, the situation of the UK industry was relatively healthy. Production and capacity utilization increased and domestic market share was maintained, as was an adequate level of profitability; the only negative trend was in price levels, stocks and employment, which latter was reduced as productivity rose.

(50) However, in the investigation period, all the indicators turned downwards compared with the first nine months of 1991. In particular, production slumped, as did domestic sales and market share, while prices continued to fall and the industry made a loss overall.

(51) In view of the above factors, the Commission considers that the UK industry has suffered material injury.

F. CAUSALITY

(a) Introduction

(52) The UK-produced ammonium nitrate and the ammonium nitrate imported from Russia and Lithuania are in direct consumption with each other, essentially on the basis of price. (An allowance is considered appropriate for a perceived difference in quality, as was explained in recital 36). The products are aimed at the same type of customers and are both sold in the same form — half-tonne bags.

(b) Injury caused by dumped imports

(i) *Market share*

(53) Between 1989 and 1991, the market share of imports from Russia and Lithuania rose from 0,1 % to 7,4 %. During this period, these imports had no effect on the market share of the UK producers, which remained steady at over 76 %, but rather displaced imports from other sources.

(54) However, the investigation period, the market share of the dumped imports from Russia and Lithuania increased from 7,3 % to 16,5 %. During the same period, the market share of the UK producers fell from 72,4 % to 60 %. Since the share of imports from other sources rose by only 3,2 %, most of the fall in the market share of the UK industry can be attributed to the dumped imports.

(ii) *Sales*

(55) During the investigation period, the sales of the UK producers fell by 218 000 tonnes, while the volume of dumped imports from Russia and Lithuania rose by 100 000 tonnes. Therefore a major part of the loss of domestic sales can be attributed to dumped imports.

(iii) *Production*

(56) The UK industry's production fell by 458 000 tonnes during the investigation period. During the same period, the 100 000 tonne increase in the dumped imports contributed to a part of this decline, and to a portion of the corresponding fall in capacity utilization.

(iv) *Prices and profitability*

(57) In the investigation period the average selling price per tonne of the UK producers stood at £97,50, which represented a decline of 3 % on the same period in 1991 and a drop of 10 % compared with 1990. It is clear that the increasing presence of dumped imports played a considerable part in this fall in prices, since they were being offered on the market at prices up to 20 % below the UK producers' costs. In 1991, the UK industry maintained market share in the face of the dumped imports by reducing prices and suffered a corresponding fall in profits ; however, even at this lower price level, the UK producers were still able to obtain an adequate, if reduced, profit margin. During the investigation period, the UK producers, in the face of the price undercutting of the dumped imports, reduced prices further, but still suffered a large drop in sales.

(58) With regard to the impact of undercutting, it has been established that, even after allowing for the normal price gap which exists between the UK product and imports, the dumped imports have undercut the prices of the UK manufacturers by 5 to 10 % during the investigation period. After allowing for this gap, competition between imports and domestic product is purely on the basis of price. In this regard, the investigation has established, on the basis of documented evidence, that many customers switched from buying the UK product to purchasing dumped imports because of the lower price of the latter, which forced the UK producers to reduce prices further in an attempt to compete.

(59) Therefore the dumped imports have been the main cause of the fall in prices during the investigation period, and they have also been partly responsible for the decline in profitability.

(c) Injury caused by other factors

(60) It has been alleged that factors other than the dumped imports have caused injury to the UK industry. These are examined below.

(i) *Imports from other sources*

(61) Between 1989 and the investigation period, the share of imports from countries other than Russia and Lithuania remained stable at 23 % of the UK market. As explained above, these imports lost ground to the imports from Russia and Lithuania between 1989 and 1991, but their market share increased by 3,2 % during the investigation period, while the UK producers lost 12,4 % of the market share at this time. Therefore the non-dumped imports did play a minor part in reducing the UK industry's share of the market, but in volume terms their 16 000 tonne increase in sales contributed only slightly to the UK producers' 218 000 tonne drop in domestic sales.

(62) The average cif import price of imports from other sources was 15 % above those of the dumped imports and the investigation showed that the final selling price in the UK was in general above the price of the imports from Russia and Lithuania. In these circumstances, the non-dumped imports have not caused any significant injury to the UK producers, since their impact on the market in terms of volume and price has not substantially changed since 1989.

(ii) *Imports of other nitrogen fertilizers*

(63) Certain importers have argued that imports of ammonium nitrate from Russia and Lithuania had only replaced imports of other nitrogenous fertilizers, notably urea, which had declined, and that any injury suffered by the UK producers of ammonium nitrate should be seen in this context.

(64) Despite the fact that ammonium nitrate is the product under consideration in this proceeding, it is clear that UK producers of ammonium nitrate could be adversely affected by imports of other nitrogen fertilizers, such as urea, which are not produced in the UK. However, the argument is not supported by the facts. Between 1989 and 1992 (the investigation period annualized) total imports of nitrogenous fertilizers rose by 200 000 tonnes, due entirely to the increased imports of dumped ammonium nitrate from Russia and Lithuania. Therefore it is not the case that the dumped imports have replaced other nitrogenous fertilizers — they have added to the market.

(iii) *Decline in total demand*

(65) It has been alleged by several parties that the decline in the total demand for ammonium nitrate in the UK caused injury to the UK manufacturers.

(66) Between 1989 and 1991, the 8 % decline in total demand for ammonium nitrate in the UK was a significant cause of the UK producers' comparable decline in domestic sales, since market share remained constant. In the investigation period, about 100 000 tonnes of the UK producers' sales decline of 218 000 tonnes was directly attributable to the further 8 % fall in the total demand.

(67) Over the whole period between 1989 and September 1992, the market has fallen 15 % and the UK producers' sales have dropped by 30 %. Therefore, the fall in total demand has had a certain impact on the negative development of sales and production.

(iv) *Strategy of UK producers*

(I) Capacity, production and stocks

(68) Some exporters and importers alleged that the injury suffered by the UK industry has been self-inflicted, since the UK producers have retained too much capacity and have over-produced.

(69) Although the UK producers reacted to a 15 % fall in total demand between 1989 and the investigation period by reducing annual production capacity by 500 000 tonnes (equivalent to 16 % of the 1989 level), they have continued throughout the period to maintain a level of capacity which is 50 % above total UK demand and almost twice the level of their domestic sales. While it is true that a certain amount of this capacity has been used to produce ammonium nitrate used for internal blending or industrial purposes, in view of the fact that there are very few exports from the UK and a considerable level of import penetration (even without the dumped imports), this situation has encouraged over-production by the UK producers.

(70) Between 1989 and 1991, the UK industry's production increased by 13 % or 240 000 tonnes, at a time when total UK demand dropped by 160 000 tonnes. Although a part of this production is used internally and not sold to customers, this over-production led to a 230 000 tonnes increase in stocks over the period. This increase in stocks cannot be attributed to the dumped imports, since these had no impact on the UK industry's market share in this period. The complainant has pointed out that the stock level was quite low at the end of 1989; however, this does not justify the extent of the increase between 1989 and 1991.

(71) During the investigation period, in a reaction to past over-production and as a result of a decline in production for blending, the UK producers reduced production drastically, by almost five times the increase in dumped imports. In spite of this drop, stocks continued to grow.

(72) One producer had to stop production for a considerable period, which increased unit production costs and had a negative effect on profitability in this period. In the circumstances, therefore, at least a part of the UK industry's loss can be explained by excess production in the past.

(73) In fact, production in the investigation period was 20 % below the 1989 level, while total market demand had fallen 15 % since this time. Therefore it is concluded that the massive fall in production, the accompanying fall in capacity utilization and the build-up of stocks in the investigation period was due mainly to previous over-production and not to dumped imports. The fall in production since 1989 has been due mainly to falling overall demand.

(II) Cost strategy

(74) It has been alleged by certain importers that the UK producers have been inefficient and have carried excessive overheads.

(75) The Commission has found, however, that UK producers have certainly succeeded in cutting costs. Although certain unit production costs rose in the investigation period due to the disruption of output, the producers in general have reduced costs and particularly sales overheads since 1989.

(III) Sales policy

(76) Certain importers have also alleged that the UK industry has failed to adapt its production and selling pattern to the changing market situation by continuing to produce all year round, expecting merchants and farmers to purchase ammonium nitrate months in advance of the spring season and to bear the costs involved. They allege that customers increasingly prefer to wait until nearer to the season before purchasing their fertilizer, and that in this regard, importers, unlike the UK producers, are responding to this trend by concentrating their activity in the winter/spring months. This situation has contributed to injury suffered by the UK producers.

(77) The Commission has found that there is indeed a trend towards merchants and farmers buying closer to the season. However, this trend has been accelerated by the availability of large volumes of cheap, dumped imports from Russia and Lithuania, and it is clear that, in general, importers of seasonal products will always have more flexibility than producers to decide exactly when they wish to supply the domestic market, since the producers must produce fairly continuously in order to maximize the use of their plant and keep unit costs down (although this does not mean that they should over-produce or maintain excess capacity). In this sense, there is a limit to the extent to which they can 'adapt to the market' in the same way as importers. Furthermore, it has been established that the UK producers are obliged to sell forward at a considerable discount or on a trust basis, with the final price negotiated later, so that they are bearing the costs rather than the customers.

(IV) Distribution policy

(78) Importers have also alleged that the UK producers have in recent years limited their sales to a small number of distributors, some of whom have subsequently merged, and in doing so they have made it impossible for some customers to obtain UK producers' product, at least at a reasonable price. In this way the UK manufacturers have excluded themselves from a part of the domestic market, and have thus inflicted injury on themselves.

(79) The Commission cannot agree with this claim. It is normal for companies dealing in such commodity products to deal with a number of merchants or dealers. Both the UK producers and importers of the Russian and Lithuanian product sell to such customers, sometimes the same ones. While it is possible that a small number of customers may have had to purchase the UK product through different sales channels than in the past, there is no evidence to suggest that there was a general problem of obtaining the UK product.

(V) Productivity improvement

(80) Employment in the UK industry declined by 20 % between 1989 and 1991, at a time when production rose by 13 %. Therefore the main part of the decline in employment must be attributed to increased productivity.

(d) **Conclusion**

(81) In view of the above, the Commission concludes that certain factors other than the dumped imports have contributed to the injury suffered by the UK industry.

(82) In particular, the overall decline in demand, overproduction and the maintenance of over-capacity by the UK producers have played a significant part in the negative development of production, stocks and capacity utilization, and a smaller part in respect of the decline in sales, market share and profitability. Improved productivity was mainly responsible for the fall in employment.

(83) The remaining injury, caused by dumping, consists of the major part of the fall in sales and market share in the investigation period and has been a major factor reducing prices and profitability of the UK industry since 1990, although profits were still adequate until the investigation period. Dumping has also had a certain impact on the fall in production and the rise in stocks, but has had no discernable impact on capacity utilization or employment.

(84) The Commission concludes that a part of the injury to the UK industry has been caused by other factors. However, in view of the gravity of the overall injury in this case, it is concluded that the remaining injury suffered during the investigation period, caused by dumped imports from Russia and Lithuania, is material.

G. COMMUNITY INTEREST

(a) General

(85) In examining whether the interest of the Community calls for the taking of anti-dumping measures, the Commission considers that the purpose of such measures — preventing distortion of competition arising from unfair commercial practices and thus reestablishing open and fair competition in the Community market — is fundamentally in the general Community interest.

(b) Consequences for Community industry

(86) With regard to this proceeding, the Commission considers that without measures to correct the effects of dumped imports, one or more of the UK producers may be forced to close plants and perhaps to shut down altogether, especially in view of the large volume of surplus capacity in Russia and Lithuania, and the dumping practices identified during the investigation period.

This would lead to a considerable loss of employment in the UK and would reduce the amount of competition in the market.

(c) Impact on users

(87) It is true that farmers in the UK have benefited in the short term from the low price of dumped imports, and some farmers have expressed their concern to the Commission with regard to the possible impact of anti-dumping measures on the price of fertilizers in the UK market. However, it must also be borne in mind that fertilizers account for only 10 % of the cost of farmers' total input in the UK, the price of fertilizers having fallen considerably in recent years. According to Ministry of Agriculture, Fisheries and Food statistics, by September 1992, fertilizer prices were 24 % below their 1985 level. Therefore, any adjustment in prices resulting from an anti-dumping measure is unlikely to have a major impact on farmers' budgets, and on balance is not sufficient reason to deny legitimate protection to the UK producers.

(d) Impact on trade with countries of the former Soviet Union

(88) With regard to the criteria determining Community interest, several exporters argued that the Commission, when formulating proposals in anti-dumping cases, must give proper consideration to the Community's stated commitment to encourage trade with the countries of the former Soviet Union in order to facilitate their transition to market economies. The Commission notes, however,that this does not exclude that anti-dumping measures should be taken in cases where legitimate protection for the Community industry is warranted. In addition, the solution proposed by the Commission in this case attempts to minimize any conflict between this aim and the need to encourage continued trade with the countries of the former Soviet Union, within the framework of the Community's anti-dumping legislation.

(e) Conclusion

(89) The Commission concludes that anti-dumping measures are in the interest of the Community in this case.

H. TERMINATION OF PROCEEDING AS REGARDS BELARUS, GEORGIA, TURKMENISTAN, UKRAINE AND UZBEKISTAN

(90) As explained in recital 16, the Commission found no evidence of imports of ammonium nitrate originating in Belarus, Georgia, Turkmenistan, Ukraine and Uzbekistan to the UK during the investigation period. The anti-dumping proceeding with regard to these countries should therefore be terminated.

(91) The complainant has pointed out that substantial production capacity exists in these countries and alleges, on the basis of prices quoted in east European markets, that there is a threat of injury. However, there is no evidence of any imminent change in circumstances which could lead to an influx of dumped imports from the countries in question.

(92) No objection to this course of action was raised in the Advisory Committee.

I. ACCEPTANCE OF UNDERTAKINGS WITH REGARD TO IMPORTS ORIGINATING IN RUSSIA AND LITHUANIA

(i) Procedure

(93) Prior to reaching its conclusion of dumping and injury in this case, the Commission disclosed its findings to all the parties involved in the proceeding. After analysing all the comments received, the Commission concluded that imports originating in Lithuania and Russia had been dumped and had caused material injury to the UK industry and that protective measures were in the Community interest. In accordance with Article 13 (6) of Regulation (EEC) No 2423/88, the Commission gave exporters in Russia and Lithuania the opportunity to offer undertakings in respect of the region concerned.

(94) It should be noted that, prior to the acceptance of the undertakings, the Commission has completed a full investigation of the case and in particular gave all parties concerned the opportunity to exercise their rights under Article 7 (4) of Regulation (EEC) No 2423/88.

(ii) Protective measures in a regional case

(95) The purpose of anti-dumping measures in a regional case is to give legitimate protection to the region concerned, in this case the UK, which accounts for about 40 % of the Community's consumption and production of ammonium nitrate. Since a duty cannot be levied solely on

imports into one Member State of a customs union such as the Community, undertakings are the preferred solution in such cases and must be considered first. The alternative course of action would be to levy an anti-dumping duty on the whole Community. This would have the unintended but unavoidable effect of protecting the remainder of the Community industry, which has not requested such protection. Therefore, under the said Article 13 (6), such a duty should be imposed only if acceptable undertakings are not offered promptly.

(iii) Type of undertakings

(96) The Commission gave notice to both the Lithuanian and Russian exporters that, in addition to price undertakings, quantitative undertakings, involving exporters in each country limiting their exports of ammonium nitrate to the UK to a certain tonnage, would be considered. Since Russia and Lithuania exported the same tonnage to the UK during the investigation period, it is considered that the undertaking volume should be divided equally between them.

(97) The UK industry, although opposed to undertakings in this case, on the grounds that their enforcement would be extremely difficult, has expressed a preference for price undertakings, arguing that quantitative measures do not address the problem of inadequate pricing levels on the market.

(98) The Commission, however, considered that quantitative undertakings are preferable to price undertakings in this proceeding because, in view of the fluctuations in prices, a price-based solution could end up excluding Russia and Lithuanian imports from the UK market. In particular, it is known that the UK producers cut their sales prices sharply just after the end of the investigation period. Since it cannot be determined how much, if any, of this price cut was due to dumped imports, it would be unfair to establish a non-injurious price based on the average of the investigation period, and expect the exporters to remain in the market at such a price, given subsequent market conditions.

(99) The Commission further considers that a quantitative undertaking would allow exporters to maintain a certain level of production by remaining in the UK market, but at the same time it would remove the injury caused to the UK producers by dumped imports since a reduced quantity of such imports from Russia and Lithuania would create an opportunity for increased sales and production by the UK industry and should have a positive impact on UK prices.

(100) In addition, such undertakings would not be anti-competitive because ammonium nitrate is imported into the UK from many other sources (notably east European countries). These imports compete directly with the UK products and already hold a significant market share.

(iv) Volume of imports in quantitative undertakings

(101) Taking into account the average levels of imports from Russia and Lithuania between 1990 and 1992, and the fact that imports into the UK from these countries in 1992 exceeded 320 000 tonnes, the Commission considers that a substantial reduction on this volume is necessary to remove material injury, and therefore concludes that the quantitative undertakings should provide for combined annual import volume from Russia and Lithuania not exceeding 200 000 tonnes, i.e. 100 000 tonnes from each country. This represents a reduction of almost 40 % on the 1992 figure.

(v) Acceptance of undertaking as regards imports originating in Lithuania

(102) The Lithuanian exporter, Jonava Azotas, which has cooperated fully in the investigation, offered to restrict the volume of its exports to the UK to 100 000 tonnes per year. Since it is the only producer in Lithuania, and has its own export operation, plus the fact that the undertaking is given with the support of the Lithuanian Government, the Commission is satisfied that Jonava Azotas can control all exports of ammonium nitrate of Lithuanian origin.

(103) The undertaking provides for monitoring which the Commission believes will be effective. The Lithuanian producer has agreed to provide detailed quarterly (and initially monthly) reports of its exports to the UK and to other Member States, on a transaction-by-transaction basis, which will be subject to verification. Since regular information will be supplied on all exports to the Community, not just to the UK, complete with details of shipping arrangements and the identity of the final customer, the Commission is satisfied that it can monitor any imports into the UK via other Member States, and make sure that they have been included in the undertaking volume.

(104) The Commission therefore considers that the undertaking offered by Jonava Azotas should be accepted.

(vi) Acceptance of undertakings with regard to imports originating in Russia

(105) In view of the large number of producers in Russia which are current or potential exporters of ammonium nitrate following the divestment of the central control of exports in Russia from a former State-owned body, the Commission considered that only an undertaking administered by the central government can reasonably be expected to cover all exporters and therefore be acceptable.

(106) The Commission has received an offer of an undertaking from the Ministry of External Economic Relations of the Russian Federation, in which the Ministry offers to limit exports of ammonium nitrate originating in Russia to the UK to 100 000 tonnes. This undertaking would be monitored by the introduction of a general system of exporting licensing for this product, with licences for exports to UK customers being limited to shipments of not more than 100 000 tonnes per year.

(107) Having examined this undertakings offer, the Commission considered that the Russian authorities had the power to control the exports of all Russian producers, since the export licence would have to be presented to the customs before the goods would be authorized to leave Russian territory. It is also noted that the undertaking provides for the submission of detailed quarterly (and initially monthly) export reports to the Commission on a transaction-by-transaction basis, which will be subject to verification. The Russian authorities are also prepared to hold consultations with the Commission in the event of any problems with the undertaking, and have declared themselves willing to cooperate in preventing circumvention. With regard to the last point, the same considerations as those expressed in recital 103 with regard to Lithuania apply.

(108) In these circumstances, the Commission considers that the undertakings offered by the Russian Ministry of External Economic Relations should be accepted.

(vii) Considerations with regard to the acceptance of undertakings offered

(109) The UK industry has argued that the undertakings offered by the Ministry of External Economic Relations in Russia will not be respected, since the Russian authorities are not able to control exports.

(110) The Commission rejects this argument and, in view of the facts set out in recitals 106 and 107, continues to be satisfied that the Ministry can control all Russian exports and therefore enforce the undertaking.

(111) The UK industry also argued that, even if exports were adequately controlled, the undertakings would be circumvented by imports made into the UK via other Member States, which would enable the exporters to exceed the quantities envisaged for the UK.

(112) Given the establishment of the single market, the Commission does not underestimate the difficulty of monitoring such a regional undertaking. In this context, the Commission intends to begin monitoring compliance with the undertaking immediately following its entry into force, and to conduct regular verifications of the data provided, in the light of the procedures explained in recitals 103 and 107.

(113) The UK industry further alleged that the combined quantities of 200 000 tonnes offered by the parties in Russia and Lithuania were too high and would not remove injury. They pointed out that the quantities offered were above the volume of imports from Russia and Lithuania in 1991, and claimed that, since the UK industry had already suffered considerable injury during this period, this demonstrated that the quantities were excessive.

(114) The Commission, for the reasons stated in recital 49, does not consider that the UK industry suffered material injury in 1991. As stated in recital 101, the quantities offered represent a reduction of 40 % on the import volume in 1992, a period in which the UK industry did suffer material injury caused by dumped imports from Russia and Lithuania. They therefore involve a substantial cutback in the injurious imports, and will consequently lead to improved sales and pricing opportunities for the UK industry, in spite of a certain decline in overall demand.

In the light of the above, the Commission concludes that the quantities offered are reasonable and sufficient to eliminate injury.

(115) It has also been argued that, in any event, a regional quantitative undertaking is not in the interest of the Community in this case, since it will have the effect of deflecting a considerable volume of dumped imports to other Member States, thus causing injury elsewhere in the Community. The UK industry has advanced this argument, contending that the most appropriate measure in this particular case would be a Community-wide anti-dumping duty, because the undertakings offered are not adequate.

(116) The Commission agrees that, as a result of quantitative limits, there may (depending on trading conditions) be some deflection of imports towards other Member States, notably France, where the restriction on direct imports from Russia and Lithuania has now been undermined by imports from these countries entering in free circulation via other Member States. However, an assessment of Community interest involves a balanced evaluation of the impact of measures on all interests in the Community, and in this respect it is considered that, since the undertakings offered in this case are deemed to be adequate, the imposition of a Community-wide duty would be a disproportionate remedy, in that it would grant protection not only to the UK, but to the rest of the Community industry, representing 60 % of production, which has not requested such measures. Furthermore, it would require an anti-dumping duty to be paid on a large volume of imports for which no injurious dumping has been alleged or established. In comparison, any minor trade deflection effects of the undertakings are on balance far less significant with regard to the interest of the Community as a whole.

(117) When the Advisory Committee was consulted on the acceptance of the undertakings offered, several Member States raised objections. Therefore, in accordance with Articles 9 and 10 (1) of Regulation (EEC) No 2423/88, the Commission sent a report to the Council on the results of the consultations and a proposal that the investigation be terminated by the acceptance of undertakings. Consequently, in accordance with the said Articles 9 and 10 (1), this Decision will only take effect and be published if the Council does not decide otherwise within one month.

(viii) Imposition of anti-dumping duty in the event of breach of undertaking

(118) The Commission notes that in case of breach of the undertakings with regard to Russia and Lithuania, a provisional duty in respect of the Community as a whole can be imposed immediately, on the facts established in the present investigation and without carrying out new investigations concerning dumping and injury resulting therefrom.

(119) With regard to the level of duty, Article 13 (3) of Regulation (EEC) No 2423/88, states that the rate of duty should be limited to a level sufficient to remove injury if this is lower than the dumping margin.

(120) In this case, the Commission considers that in order for a duty to remove injury caused by dumped imports, it would be necessary for it to increase the price of these imports to a level which will enable the UK producers to price at a level corresponding to their cost of production plus a reasonable profit.

(121) Since the UK industry made a loss during the investigation period, the most appropriate method to eliminate the effect of injurious dumping by means of a duty would be to compare the Russian and Lithuanian selling prices (adjusted for the normal £ 8 price gap) with a target price for the UK producers. The target price would consist of the cost of production plus a reasonable profit of 10 %, this cost having been adjusted to exclude an increase during the investigation period due to factors other than dumped imports.

(122) Expressed as a percentage of the CIF price, the injury elimination level amounts to 17,5 % with regard to imports from Lithuania and 26,7 % for Russia, (equivalent to £ 11,50 and £ 16 per tonne respectively). Both these amounts are well below the respective dumping margins of 34,4 % and 40,6 %, and therefore duties would be based on injury elimination levels.

(123) In view of the variations in declared CIF prices encountered during the investigation, the Commission considers that a specific duty equivalent to £ 11,50 per tonne for imports from Lithuania and equivalent to £ 16 per tonne with regard to imports from Russia, would be the most effective type of anti-dumping duty to eliminate the injurious effects of dumping,

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings offered by Russia and by Jonava Azotas, Lithuania in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Lithuania are hereby accepted.

Article 2

The investigation in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Lithuania is hereby terminated.

Article 3

The anti-dumping proceeding concerning imports of ammonium nitrate originating in Belarus, Georgia, Turkmenistan, Ukraine and Uzbekistan is hereby terminated.

Article 4

This Decision shall take effect on the day following its publication in the *Official Journal of the European Communities.*

Done at Brussels, 13 April 1994.

For the Commission

Leon BRITTAN

Member of the Commission