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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2022/95

of 16 August 1995

imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (1), and in particular Article 23 thereof, which laid down that 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 (2), shall continue to apply to proceedings in relation to which an investigation pending on 1 September 1994 has not been concluded by the date of entry into force of Regulation (EC) No 3283/94,

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

Whereas :

A. PROCEDURE

(1) In June 1994, the Commission announced by a notice published in the *Official Journal of the European Communities* (3), the intiation of an anti-dumping proceeding concerning imports into the Community of ammonium nitrate originating in Lithuania and Russia, and commenced an investigation.

(2) Anti-dumping measures with regard to imports into the United Kingdom of ammonium nitrate originating in Lithuania and Russia have been in force since May 1994, following a regional anti-dumping proceeding (4). These take the form of the acceptance of undertakings which limit exports from each country to the UK to 100 000 tonnes per year.

(3) The proceeding was initiated as a result of a complaint lodged by the European Fertilizer Manufacturers' Association (EFMA), on behalf of producers whose collective output of ammonium nitrate was alleged to represent a major proportion of Community production.

(4) The complaint contained evidence of dumping of this product originating in Lithuania and Russia, and of material injury resulting therefrom, and was considered to be sufficient to justify opening a proceeding.

(5) The Commission officially notified the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and the complainant, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) The Lithuanian exporter, some Russian exporters, certain importers and all complainant producers made their views known in writing. Several parties, including the Lithuanian and Russian authorities, requested a hearing ; all such requests were granted. The European Fertilizer Importers' Association (EFIA) also made known its views in writing and was granted a hearing.

(7) The Commission sent questionnaires to parties known to be concerned and received detailed replies from the complainant Community producers, the only producer and exporter in Lithuania

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
(2) OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 355/95 (OJ No L 41, 23. 2. 1995, p. 2).
(3) OJ No C 158, 9. 6. 1994, p. 3.
(4) Commission Decision 94/293/EC of 13 April 1994 (OJ No L 129, 21. 5. 1994, p. 24).

and some importers in the Community. The Commission also received a detailed reply from one Community producer which was not party to the complainant, partial replies were received from certain producers in Russia.

(8) The Commission sought and verified all information it deemed necessary for the purpose of its determination of dumping and injury, and carried out investigations at the premises of the following firms :

(a) *Complainant Community producers :*

— Grande Paroisse SA, Paris-la-Défense, France,

— Hydro-Agri-France SA, Neuilly-sur-Seine, France,

— Hydro-Agri (UK) Ltd, Immingham, United Kingdom,

— Hydro-Agri, Sluiskil BV, Netherlands ;

(b) *Unrelated importers in the Community :*

— Noortrade GmbH, Viernheim, Germany,

— Schweizerhall Fertilizer GmbH, Hamburg, Germany,

— Unifert France SA, Sète, France,

— Conagra Resources Europe Ltd, Tiverton, Devon, United Kingdom ;

(c) *Producer in analogue country :*

— Zaklady Azotawe 'Pulawy', Pulawy, Poland.

(9) The investigation of dumping covered the period from 1 April 1993 to 31 March 1994 ('the investigation period').

(10) The Commission disclosed its preliminary findings to all interested parties. Several parties submitted comments in writing ; some requested and were granted a hearing.

(11) The Commission continued to seek all information it deemed necessary for its definitive findings. The parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which to make representations subsequent to these disclosures.

(12) The parties' comments were taken into consideration and the Commission's conclusions amended accordingly where justified.

B. PRODUCT UNDER CONSIDERATION AND LIKE-PRODUCT

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

(14) The ammonium nitrate produced by the Community industry is a like-product as regards physical and technical characteristics to the ammonium nitrate exported to the Community by Russia and Lithuania, and as regards the ammonium nitrate procuded and sold in Poland, which has been used as the analogue country (Recitals 22 to 24).

C. COMMUNITY INDUSTRY

(15) The complainant producers account for 94 % of the Community production of ammonium nitrate and therefore constitute the Community industry in accordance with Article 4 (5) of Regulation (EEC) No 2423/88.

(16) EFIA, representing the Community importers, alleged that Hydro Fertilizers Ltd (UK) should be excluded from the Community industry because it allegedly imported ammonium nitrate from Russia and Lithuania through Fertrachem UK, a related company. However, it was established that no such imports were made during the investigation period by Fertrachem. It was also alleged that BASF, another complainant producer, should be excluded on the same grounds, since it allegedly imported Russian and Lithuanian ammonium nitrate into the Community through a related company, Kali (UK) Ltd. It was established that Kali (UK) Ltd did import ammonium nitrate from Lithuania and Russia during the investigation period, and had no agreement with any company related to BASF, either directly or through a subsidiary during this period, and had no agreement with any company related to BASF as regards purchases of ammonium nitrate.

There is consequently no justification for considering the exclusion of either Hydro Fertilizers Ltd (UK) or BASF from the Community industry.

D. DUMPING

(a) Normal value

(I) *Selection of analogue country*

(17) Since the exporting countries involved are both non-market economies, normal value was based on prices or costs in an analogue country, in accordance with Article 2 (5) of Regulation (EEC) No 2423/88.

(A) PROPOSAL BY THE COMPLAINANT: HUNGARY

(18) The complainant alleged that Hungary, which had been used in the UK regional case (see Recital 2), would be an appropriate analogue country for the purpose of this investigation. Contact was made with Nitrogenmuvek, Varpalota, Hungary; the details of the second producer in Hungary were not available to the Commission. Nitrogenmuvek replied to the Commission's questionnaire. On the basis of this reply, it appeared that the domestic sales of Nitrogenmuvek during the investigation period were significant compared to the volume of imports into the Community from Russia and Lithuania. 80 % of domestic sales were bagged. The Hungarian producer uses domestic or imported gas purchased at market prices.

(19) However, Nitrogenmuvek did not respond to the Commission's request for a verification visit. In these circumstances, it did not appear possible to establish a reliable normal value on the basis of the Hungarian data available. In addition to there being only two domestic producers of ammonium nitrate in Hungary, imports are restricted by a 15 % import duty and since 1993 by an annual import quota against CIS countries of 50 000 tonnes of ammonium nitrate and calcium ammonium nitrate combined. Consequently, competition is rather limited. For these reasons Hungary is not an appropriate analogue country.

(B) OTHER COUNTRIES

(20) The Commission also wrote to all known producers of ammonium nitrate in Australia, Bulgaria, Canada, Egypt, Mexico, Poland, Turkey and the USA. In addition, the EFIA proposed Algeria and Romania as analogue countries, and the Commission wrote to the known producers in these countries.

The following producers cooperated and replied to the Commission's questionnaire:

— Abu Qir Fertilizers Co, Alexandria, Egypt,

— Zaklady Azotawe 'Pulawy', Pulawy, Poland.

(i) Egypt

(21) During the investigation period, the volume of domestic sales of ammonium nitrate in Egypt was in excess of the combined volume of imports into the Community from Russia and Lithuania. Domestic sales were 100 % bagged, like the Russian and Lithuanian exports.

However, although there are three domestic producers and no formal import restrictions, the 30 % customs duty on imports of ammonium nitrate into Egypt has led to a situation were there is no import penetration. Therefore, there is only limited competition in the market.

(ii) Poland

(22) During the investigation period, Pulawy's domestic sales of ammonium nitrate were almost the same as the combined import volume into the Community from Russia and Lithuania. The product is produced by Pulawy in prilled form. 100 % of the domestic sales were bagged. Pulawy uses imported gas from Russia purchased at arms length prices expressed in hard currency.

There are four domestic producers of ammonium nitrate. During the investigation period there were no import restrictions and the share of the market held by imports was 18,2 %.

Poland was therefore considered an open and competitive market for ammonium nitrate.

(C) CHOICE OF ANALOGUE COUNTRY

(23) Hungary cannot be chosen as an analogue country, in view of the conclusion reached in Recital 19.

As to the other countries from whose producers the Commission obtained sufficient cooperation, although the volumes of domestic sales of the cooperating companies in both Egypt and Poland are significant in comparison with the volumes of imports from Russia and Lithuania, and access to raw materials is not dissimilar, it is considered that the more open nature of the Polish market makes it the more appropriate choice for the analogue country in this investigation, and Poland was accordingly chosen.

(II) *Determination of normal value*

(24) On the basis of the elements stated in Recital 22, the domestic sales of Pulawy in Poland can be regarded as representative.

The weighted-average domestic sales price of the Polish producer to independent customers during the investigation period was found to be profitable, in that it covered all costs incurred, which in this case were found to be representative of the normal cost structure of a company operating in a market economy.

(25) EFMA alleged that the domestic price on which the normal value was based was incorrect, since it was lower than the reported level of prices in the Polish market. Furthermore, EFMA alleged that the domestic price inferred from the normal value could not cover the cost of production in Poland. EFMA provided some documentation to support these allegations.

(26) Further contact was made with the Polish manufacturer involved in order to clarify the price and cost situation in Poland. Most of the relevant information supplied by the company had already been verified by the Commission.

(27) The Polish company clarified the situation and provided evidence to show that the price information referred to by EFMA was based on standard ex-dealer prices to farmers, and was therefore well above the manufacturer's net ex-works price to the dealers. As regards costs, they provided further evidence to support the cost data verified by the Commission, to demonstrate that they covered the costs of the company relating to this product, and to show that they purchased gas at arms length prices. However, the Commission was also able to obtain confirmation that a cost normally borne by the company had been mistakenly netted out of the company's own normal value calculations. The normal value was therefore increased to reflect that fact that this cost should not have been deducted from the domestic price when calculating normal value.

(28) After having reviewed all the data, it is concluded that the net ex-works price provided by the Polish manufacturer, with the adjustment referred to in recital 27, was correct, and that this price was profitable, covering all costs incurred by the economy at this stage of the operation.

Normal value was therefore based on the net ex-works price of Pulawy to customers in Poland.

(b) Export price

(29) The export price of ammonium nitrate originating in Russia and Lithuania was based on the price paid to exporters to the product sold for export to the Community. This was the fob ex-frontier price charged by the exporter to an agent or importer in the Community.

(c) Comparison

(30) The comparison between normal value and export price (both at ex-frontier) was made on a weighted-average basis at the same level of trade. In the case of all transactions, the export price was lower than the normal value, both adjusted for comparison purposes. The ex-works domestic price was increased to allow for the normal level of transport and handling costs between the factory and the port in Poland during the investigation period. This increase was calculated on the basis of transport and handling costs actually incurred by the Polish producer in question, supplemented by information from other operators in Poland relating to the handling costs for other types of bags.

(31) Normal value and export price were adjusted to take account of certain selling expenses specified in Article 2 (10) (c) of Regulation (EEC) No 2423/88. The cost of bags used in the Polish producer's domestic sales was less than the price of the bags used to pack the Russian exports, and normal value and export price were both reduced to reflect these directly related packing costs. In the case of the Lithuanian exports, although the normal cost of bags was higher than for those used by the Polish producer, a significant proportion of the Lithuanian export sales to the Community during the investigation period were made in bulk, which incurred no bagging costs. Therefore, the appropriate adjustment was made only as regards the part of the epxorts made as bagged product.

The Russian authorities claimed that the normal value should be reduced to take account of the lower cost of transporting gas to the Russian plants compared to the Polish factory. In this regard, it is noted that no precise data has been produced on the distances involved and that the costs and prices in regard to gas and its distribution in Russia are not established on a market basis. In any event, such claims for reductions in normal value for alleged natural competitive advantage have to be considered on an overall basis. Therefore, even if it is were to be established that the Russian producers had an advantage over the Polish manufacturer as regards the proximity of gas supplies, this would be counterbalanced by their much greater distance from the Baltic ports, involving a higher transport cost. Therefore this claimed adjustment cannot be accepted.

The Russian authorities also claimed that normal value should be reduced to take account of the allegedly more efficient and larger production units in Russia. Concerning this claim, no evidence has been produced to show that those factories which sold ammonium nitrate to the Community during the investigation period operate more efficiently than the Polish manufacturer. Consequently, this claim is also rejected.

(d) **Dumping marigin**

(32) The dumping margins, expressed as a percentage of the cif price at the Community frontier, were 41,6 % as regards imports originating in Russia and 27,4 % as regards imports originating in Lithuania. Expressed in ecus per tonne, the margins were ECU 31,3 for Russia and ECU 21 for Lithuania.

E. **INJURY**

(a) **Market analysis**

(33) The investigation period for dumping in the proceeding was 1 April 1993 to 31 March 1994. In order to ensure a fair evaluation of the development of the factors pertaining to injury, data relating to this period is compared to the corresponding periods in previous years. For easy reference, the periods in question are described as follows in the text :

1 April 1990 to 31 March 1991 '1990/91',

1 April 1991 to 31 March 1992 '1991/92',

1 April 1992 to 31 March 1993 '1992/93'.

(i) *Total Community consumption*

(34) Community consumption (i.e. sales of the Community producers in the Community plus imports) declined from 4,76 million tonnes in 1990/91 to 4,65 millon tonnes in the investigation period, an overall fall of 2,3 %. Consumption in the investigation period was, however, 3,1 % above the level of 1992/93, when sales of ammonium nitrate had dropped sharply to only 4,5 million tonnes.

(ii) *Volume and market share of dumped imports*

(35) The combined imports of ammonium nitrate originating in Russia and Lithuania rose from 26 000 tonnes in 1990/91 to 489 000 tonnes in the investigation period. The Eurostat data does not provide separate import figures for Russia and Lithuania in 1990/91 but only one figure for the former Soviet Union. However, given that exports from both countries are known to have taken place in this period, the most reasonable solution, on the basis of the available data from the exporters, is to allocate 50 % of the former Soviet Union figure to each country. On this basis, imports from Russia increased by 13 000 to 341 000 tonnes, and imports from Lithuania from 13 000 to 148 000 tonnes. (In any event, a different allocation of the import volumes between Russia and Lithuania in 1990/91 would not materially affect the conclusion reached later in this Regulation).

(36) The combined market share of imports from Russia and Lithuania increased from 0,5 % in 1990/91 to 10,5 % during the investigation period. The market share of Russian imports rose from just below 0,3 to 7,3 % ; the share of imports from Lithuania rose from just below 0,3 to 3,2 % (1).

(iii) *Prices of dumped imports*

(37) The weighted average selling price of the imports from Russia and Lithuania were compared with the weighted average selling price of the Community producers in the Community on an ex-store basis, allowing for an appropriate mark-up for the imported material. All prices were compared at a net level, after excluding all discounts and rebates. An allowance was made for the fact that substantial sales of Community producers, particularly in the French market, were made in bulk, while imports were almost all bagged ; the Community industry price was therefore, for comparison purposes, adjusted upwards.

In calculating the weighted average price of the dumped imports, account was taken of the poor quality of a certain portion of the Russian product.

On this basis, it was found that during the investigation period the Lithuanian and Russian imports were sold at ECU 14,7 and ECU 16,2 per tonne respectively below the price of the Community producers (equivalent to 12,6 % and 13,9 % of the Community producers' price).

(38) However, the investigation has shown that the market in the Community dictates 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. The Russian and Lithuanian ammonium nitrate is perceived by farmers to be of a lower quality than the Community product, a perception which is reinforced in the publicity of certain Community manufacturers to this effect. Furthermore, importers cannot offer the same security of supply as domestic manufacturers, nor the same service to customers. Finally, most Community production of ammonium nitrate is granular, while the imported product from Russia and Lithuania is prilled ; granular product normally commands a higher price. On the basis of the information obtained in the investigation, this

(1) In the text the figures do not always add exactly, due to rounding.

'quality' gap is considered to be ECU 10 per tonne. This is based on the figure of £8 per tonne (ECU 10,4) used in the UK regional proceeding (see Recital 2), with a slight reduction being made to take account of the general decline in prices in the market during the present investigation period.

(39) Therefore, after taking account of the normal premium available to Community producers over imports, the prices of the Lithuanian and Russian imports undercut those of the Community product by ECU 4,7 and ECU 6,2 per tonne respectively during the investigation period (equivalent to 4,4 % and 5,8 % below the Community producers' price).

(40) EFIA argued that the quality gap of ECU 10 per tonne allowed for the difference between the selling price of the Community product and the dumped imports was too low, since it was based on the UK regional case. In the context of a Community-wide case the quality gap in the other major market, France, should be higher in view of the traditionally protected nature of this market and the consequent suspicion of imports by farmers. In other words, it was alleged that imports had to be priced lower than the Commission has estimated in order to overcome perceived differences in quality and enter the market.

This argument has to be rejected. Firstly, it was found that the price of the dumped imports was higher in France than in the UK, and that the level of undercutting of the domestic products' prices was lower in France. Secondly, the absolute level of prices in the market was lower during the investigation period for the Community-wide case than for the regional case. On both counts, there is is no reason to increase the quality gap beyond ECU 10 and no other evidence has been presented in favour of such an increase.

(iv) *Cumulation of dumped imports*

(41) In establishing the impact of the dumped imports on the Community industry, the question of whether the effect of dumped imports from Russia and Lithuania should be assessed cumulatively had to be addressed.

(42) At first sight several factors appear to militate in favour of cumulation :

— the volume of imports originating in both Russia and Lithuania is significant. During the investigation period, their market shares were 7,3 % and 3,2 % respectively,

— the physical characteristics of the normal quality ammonium nitrate from both countries are broadly similar,

— the Russian and Lithuanian products are in competition in the Community with each other and with the like product produced by the Community industry,

— the Russian and Lithuanian products use the same type of distribution channels in the Community and the selling price of good quality ammonium nitrate from both countries in the Community is broadly similar.

(43) However, in this particular case, a number of other factors have to be considered.

Although the combined volume of imports from Russia and Lithuania increased in the investigation period, the volume of Russian imports rose by 55 % in the investigation period compared to 1992/93, while imports from Lithuania fell by 28 % in the same period, in spite of an overall increase of 3 % in Community demand. The market share of Russia rose from 4,9 % to 7,3 % whilst that of Lithuania fell from 4,6 % to 3,2 %. Thus from a position of near parity in 1992/93, the Lithuanian and Russian imports diverged in the investigation period to a point where the former was equivalent to only about 40 % of Russian imports.

Although selling prices charged by importers in the Community for normal quality Russian and Lithuanian product are not too dissimilar, the Lithuanian product commands a small premium. The average cif import price of the Lithuanian product was ECU 89 per tonne in the investigation period, compared to ECU 75 per tonne for the Russian product. The average fob export price of Lithuanian ammonium nitrate is also well above that of the Russian product. This difference in average prices is explained by the fact that certain shipments of the Russian product were of an inferior quality which commanded exceptionally low prices on arrival in the Community and served to reinforce the image of the Russian product as being inferior and less reliable than the Lithuanian ammonium nitrate, almost all of which arrived in good condition at the Community frontier.

In addition, a particular feature of this case is the previous UK regional investigation, which has resulted in measures intended to remove injury in the UK market. Up to 1993 both Russian and Lithuanian imports had been concentrated in the UK. In the investigation period, the major part of the Lithuanian imports into the EC still went to

the UK. This high concentration in the UK means that the Lithuanian market share in the rest of the Community was barely 2 %, compared to 4 % in the UK. In contrast, less than 40 % of Russian imports to the Community were made in the UK; and Russia's market share across the Community market was more uniform than Lithuania's.

In the remainder of the Community market, excluding the UK, Russian imports increased dramatically during the investigation period, indicating a shift away from the UK market, while the trend in Lithuanian imports was downwards. Imports into the EC (minus the UK) from Lithuania declined from 33 153 tonnes (quarter ending March 1993) to 28 676 tonnes (quarter ending March 1994), a decrease of 13,5 %. Exports from Russia to the same destination increased from 22 768 tonnes to 105 830 tonnes, up by 364 %, over the same period.

(v) *Conclusion*

(44) In view of the divergent development of imports from Russia and Lithuania, in terms of their overall volume and market share in the Community and their degree of concentration in the UK market, and the difference in terms of price, it is considered that the conditions of competition between the two do not make cumulation appropriate in this case.

(b) Situation of the Community industry

(i) *Production*

(45) The production of ammonium nitrate by the Community industry fell from 4,68 millon tonnes in 1990/91 to 3,69 million in the investigation period, a decline of 21 %. Production in the investigation period was, however, 6,7 % above the level of 1992/93, when it had fallen to 3,46 million tonnes.

(ii) *Capacity utilization*

(46) The production capacity of the Community industry declined from 9,12 million tonnes in 1990/91 ato 8,58 million tonnes in the investigation period, a fall of 6 %. Over the same period, the utilization of capacity fell from 51 % to 43 %.

(iii) *Stocks*

(47) The Community industry's stocks fell from 363 000 tonnes at the end of 1990/91 to 201 000 tonnes at the end of the investigation period.

(iv) *Sales in the Community*

(48) Between 1990/91 and 1992/93, sales of the Community industry in the Community fell from 3,85 to 3,16 million tonnes. Although sales recovered to 3,40 million in the investigation period, the volume was still 12 % below the level of 1990/91.

(v) *Market share*

(49) The Community industry's share of the Community market dropped from 81 % in 1990/91 to 69 % in 1992/93, before increasing slightly to 73 % in the investigation period.

(vi) *Prices*

(50) The weighted average net selling price of the Community industry fell from ECU 145,4 per tonne in 1990/91 to ECU 171,1 per tonne in 1992/93, and then dropped further to ECU 106,9 per tonne in the investigation period. Therefore, prices in the investigation period were 26,5 % below the level of 1990/91.

(vii) *Profitability*

(51) The Community industry made a weighted-average profit of 15,6 % on sales in 1990/91. By 1992/93, this had become a loss of 2,7 %, and in the investigation period this loss worsened to 6,8 % on sales.

(viii) *Employment*

(52) The number of people directly employed by the Community industry in the ammonium nitrate sector fell from 2 444 in 1990/91 to 1 810 in the investigation period, a loss of 634 jobs and a decline of 26 %. In this regard, employment fell in line with production, which dropped by just over 21 %.

(c) Conclusion

(53) It is clear that the situation of the Community industry has worsened between 1990/91 and the end of the investigation period. The development of most of the main indicators was negative.

Over this period, production, capacity utilization, domestic sales and market share all fell, while prices dropped by 26 % and the industry's financial performance slumped from a healthy profit in 1990/91 to a serious loss in the investigation period.

Although the Community industry's production and sales volume did improve in the investigation period compared to 1992/93, this reflected a general improvement in total demand as much as any improvement in its market penetration, since the market share of the Community industry increased by only four percentage points while the sales volume rose by almost 8 %. At the same time the industry had to decrease prices further in the investigation period and suffered a heavier loss than in 1992/93.

Furthermore, the combined effect of the declining sales volume and the drop in the price level led to a fall of the Community industry's turnover for ammonium nitrate in the investigation period to only 65 % of the level of 1990/91.

(54) In view of the above factors, it is concluded that the Community industry has suffered material injury.

F. CAUSATION

(a) Injury caused by dumped imports originating in Russia

(i) *Sales*

(55) Between 1990/91 and the investigation period, the sales of the Community industry fell by 452 000 tonnes, while the volume of imports from Russia increased by 328 000 tonnes. Although a small part of the the Russian imports were made up of poor quality product that had to be sold off cheaply for solutions, it is clear that the major part of the loss of domestic sales of the Community industry can be attributed to the dumped imports from Russia, which replaced them.

(ii) *Market share*

(56) Between 1990/91 and the investigation period the market share of the dumped imports from Russia rose from 0,3 % to 7,3 %. During this period, the market share of the Community industry fell by eight percentage points from 81 % to 73 %.

(57) The market share of the Community industry did improve from 69 % to 73 % between 1992/93 and the investigation period, but this increase was achieved at the expense of imports from other sources (including Lithuania), which declined by seven percentage points, back to the level of 1990/91. The market share of imports from Russia continued to increase between 1992/93 and the investigation period. In these circumstances, it is clear that the fall in market share suffered by the Community industry between 1990/91 and the investigation period was due mainly to the increase in the dumped imports from Russia.

(iii) *Production*

(58) Production of ammonium nitrate fell by almost 1 million tonnes between 1990/91 and the investigtion period. The 328 000 tonne increase in the volume of the dumped imports from Russia contributed to a major part of this decline in production, and to a corresponding part of the fall in capacity utilization, even allowing for the portion of poor quality product, referred to in Recital 56.

(iv) *Prices and profitability*

(59) Between 1990/91 and the investigation period, the average net selling price of the Community industry fell from ECU 145 to ECU 107 per tonne. At the same time, the volume of dumped imports from Russia increased by 328 000 tonnes and displaced an equivalent volume of Community producers' sales. Since 1990/91, these dumped imports were consistently offered at prices which, even allowing for a quality difference between the Community and imported product, were significantly below the Community industry's costs of production.

The investigation has established, on the basis of documented evidence, that many customers have switched from the Community product to Russian imports purely on the basis of price.

(60) It is therefore concluded that the Community producers have had to reduce their prices to well below cost in order to maintain a certain level of sales in the face of the low prices of the dumped imports from Russia. Therefore the modest level of price undercutting by the Russian imports during the investigation period, as previously indicated in Recital 39, after an adjustment for quality, only reflects the extent to which the Community industry has had to depress its own prices in order to compete, to a point where prices were almost 7 % below cost.

Therefore the dumped imports from Russia have obviously been a significant cause of the fall in the Community industry's prices, and have consequently played a large part in the decline from profit into a considerable loss.

(b) Injury caused by dumped imports from Lithuania

(i) *Sales*

(61) Between 1990/91 and the investigation period, the sales of the Community industry fell by 452 000 tonnes, with the volume of imports from Lithuania increased by 135 000 tonnes. Consequently, a part of the loss of domestic sales of the Community industry appears to be linked to the dumped imports from Lithuania, although in the investigation period the Community industry's sales rose by 287 000 tonnes compared to 1992/93, while imports of the Lithuanian product fell by 58 000 tonnes. Consequently, the overall impact of Lithuanian imports appears to have been rather limited.

(ii) *Market share*

(62) Between 1990/91 and the investigation period the market share of the dumped imports from Lithuania rose from 0,3 % to 3,2 %. During this period, the market share of the Community industry, as previously mentioned, fell by eight percentage points from 81 % to 73 %.

(63) In these circumstances, it is clear that the fall in market share suffered by the Community industry is in part linked to the increase in the dumped imports from Lithuania. However, it should be recalled that between 1992/93 and the investigation period, the market share of Lithuanian imports fell from 4,6 % to 3,2 %. Overall, therefore, it is concluded that the contribution of Lithuania to the decline in the Community industry's market share is small.

(iii) *Production*

(64) Production of ammonium nitrate fell by almost 1 million tonnes between 1990/91 and the investigation period. The 135 000 tonne increase in the volume of the dumped imports is considered to have played only a very minor part in this decline in production, as well as in the fall in capacity utilization. In the investigation period, Community production rose by 232 000 tonnes and Lithuanian imports fell by 58 000 tonnes.

(iv) *Prices and profitability*

(65) The price of Lithuanian imports is above that of Russian imports, and only a limited volume of Community production appears to have been displaced by the Lithuanian imports. In addition, the price of the Community producers' sales fell 9 % during the investigation period, while at the same time the volume of imports of the Lithuanian product fell by 28 %, and their cif price rose by 9 %.

(66) In view of the above, it is concluded that imports from Lithuania have not had a significant impact on the prices and profitability of the Community producers.

(c) Injury caused by other factors

(i) *Imports from other sources*

(67) Between 1990/91 and the investigation period, the volume of imports from countries other than Russia and Lithuania declined from 629 000 to 537 000 tonnes, a decline of 92 000 tonnes, equivalent to 15 %. Over this period, the market share of these imports, sourced mainly from Eastern Europe and North Africa, declined from 13,2 % to 11,6 %. In addition, although they were priced below the level of the Community producers, these imports were consistently sold at prices above those of the imports originating in either Russia or Lithuania.

(68) In these circumstances, it is concluded that the imports from other sources made no significant contribution to the injury suffered by the Community industry during the investigation period.

(ii) *Decline in total demand*

(69) Total EC consumption of ammonium nitrate fell by 109 000 tonnes between 1990/91 and the investigation period. Over the same period sales of the Community industry fell by 452 000 tonnes, while imports from Russia and Lithuania rose by 463 000 tonnes. In view of the above, it is concluded that the part played by the decline in total Community demand in the fall in the Community industry's sales is only marginal.

(iii) *Strategy of Community producers*

(70) Since the production volume of the Community industry fell by 1 million tonnes between 1990/91 and the investigation period while the dumped imports increased by 463 000 tonnes, it is clear that other factors must have played a part in the decline in production and the consequent fall in capacity utilization and employment. The investigation has established that two factors were responsible for the remainder of the fall in production.

(i) a reduction in stocks by the Community industry (see Recital 47);

(ii) a fall in the amount of ammonium nitrate used for internal consumption by the Community producers, mainly for blending into compound fertilizers.

It is clear that these two factors have played a significant role in the decline in the Community industry's production.

(71) The investigation has further established that the Community industry has maintained a level of production capacity in excess of market demand between 1990/91 and the investigation period. While it is accepted that in some factories part of the declared capacity for ammonium nitrate can also be used to manufacture other nitrogen products and that overall capacity has been reduced by 6 %, it is clear that in general the capacity of the Community industry would still comfortably exceed market demand in the Community, even in the absence of the dumped imports from Russia and Lithuania. This state of affairs appears to have contributed to maintaining a higher than necessary level of fixed costs for this product.

(d) **Conclusion**

(72) The other factors identified above (Recitals 67 to 71) have played a part as regards the decline in the Community industry's production, capacity utilization and employment, and the maintenance of an excessive level of capacity may have contributed to a higher than necessary production cost, and therefore to a negative impact on profits. Nevertheless, it should be noted that between 1990/91 and the investigation period, the Community industry was able to reduce its average production cost from ECU 126 to ECU 115 per tonne, and in spite of this effort was still not able to compete with the dumped imports.

(73) The dumped imports from Lithuania have had a certain impact on the Community industry's sales and market share and played a small part in the fall in production and capacity utilization (Recitals 61 to 66). However, in view of the small volume of imports from Lithuania and their considerable decline in the investigation period, their contribution to injury to the Community industry as a whole must be considered to be a minor one. As has been stated earlier, Lithuanian imports have achieved significant penetration only in the UK market, where regional anti-dumping measures against Lithuanian ammonium nitrate remain in force.

(74) The remaining injury, caused by the dumped imports from Russia, consists of the main part of the decline in sales and market share, and by far the major part in the fall in the Community industry's prices and profits. The Russian imports have also had a significant impact on production and capacity utilization, and also on employment (Recitals 55 to 60). The impact of Russian imports was felt by the Community industry as a whole, since their market penetration was significant and increasing across the whole of the Community.

(75) In conclusion, it is found that a certain part of the injury to the Community industry has been caused by factors other than the dumped imports. The minor part of the injury attributable to dumped imports from Lithuania cannot be considered to be material. However, in view of the gravity of the overall injury in this case, it has to be concluded that the remaining injury, caused by dumped imports from Russia, taken in isolation, is material.

G. COMMUNITY INTEREST

1. General

(76) In examining whether the interest of the Community calls for the taking of anti-dumping measures, the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition is given special consideration.

2. Consequences for Community industry

(77) With regard to this proceeding, without measures to correct the effects of dumped imports, one or more Community 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 the dumping practices identified during the investigation period. This would lead to a considerable loss of employment in the Community and would reduce the amount of competition in the market.

(78) EFIA alleged that there is no large surplus capacity of ammonium nitrate in Russia. However, this allegation is contradicted by the replies of the cooperating exporters, which between them showed an unused capacity of over 1 million tonnes during the investigation period, and which furthermore represent only a minority of ammonium nitrate production in Russia. An independent study published in January 1995 concluded that there was 5 million tonnes of excess ammonium nitrate capacity in Russia.

3. Impact on users

(79) It is true that farmers in the Community have benefited in the short term from the low price of dumped imports. However, it must also be borne in mind that fertilizers account for only about 12 % of the cost of farmers' total inputs in the Community, the price of fertilizers having fallen considerably in recent years.

Therefore, any adjustment in prices resulting from an anti-dumping measure is unlikely to have a major impact on farmers' budgets, particularly in view of the relatively modest nature of the measures required to prevent injurious dumping, and on balance is not a sufficient reason to deny legitimate protection to the Community producers in this case.

4. Impact on trade with Russia

(80) When assessing Community interest and formulating proposals in this case, proper consideration must be given to the Community's stated commitment to encourage trade with Russia in order to facilitate its transition to a market economy. This does not of course mean that anti-dumping measures should not be taken where warranted; it does mean, however, that the solution proposed should attempt to minimize any conflict between preventing injury to Community industry from dumped imports and the need to encourage continued and increased trade with Russia.

5. Conclusion

(81) It is concluded that anti-dumping measures are in the interest of the Community in this case; nevertheless, full account should be taken of the arguments in Recital 80 when considering the measures to be taken.

H. CONCLUSION

1. Termination of Community-wide proceeding as regards Lithuania

(82) In view of the conclusion that the Lithuanian imports have not caused material injury to the Community industry, the proceeding for Lithuania has been terminated, by Commission Decision 95/344/EC [1].

2. Existing measures concerning the UK market

(83) The current Community-wide investigation concerning ammonium nitrate from Lithuania and Russia has established that, in the case of Russia, anti-dumping measures at Community level are warranted. At the same time, it should be noted that since May 1994 anti-dumping measures have also been in force with regard to imports of Russian and Lithuanian ammonium nitrate into the UK, following the regional case referred to in Recital 2.

These measures have taken the form of quantitative undertakings which limit annual imports into the UK from Lithuania and Russia to 100 000 tonnes for each country.

(84) With regard to imports from Russia, the regional measure does not provide adequate protection to the Community industry as a whole, since during the investigation period 60 % of Community imports of ammonium nitrate from Russia were made in Member States other than the UK. In volume terms, this represented over 200 000 tonnes, and showed a sharp rise compared to 1992/93.

It should also be noted that during this period Member States other than the UK accounted for 55 % of Community production and 60 % of demand, and that the producers in question suffered sharper declines in prices and profitability than the producers in the UK.

3. Definitive measures at Community level for imports from Russia.

(85) Anti-dumping measures at Community level are therefore justified for imports from Russia. It is therefore clear that the UK regional measures concerning these imports have to be removed, otherwise the UK market would benefit simultaneously from two separate protective measures.

Thus UK regional proceeding concerning imports of ammonium nitrate originating in Russia has been terminated by Commission Decision 95/345/EC [2].

(86) Several parties alleged that the price of ammonium nitrate in the Community, and consequently the situation of the Community producers, have improved since the end of the investigation period. They allege that this improvement makes protective measures unnecessary, and should be taken into account.

[1] See page 27 of this Official Journal.

[2] See page 29 of this Official Journal.

Although not the subject of a formal investigation it does seem that the ammonium nitrate market, in common with the nitrogen fertilizer market as a whole, has improved since the end of the investigation period. However, this does not in any way invalidate the need to remedy injurious dumping, although the type of measure proposed should take this situation into account.

4. Type of measure

(87) It is concluded that definitive anti-dumping on imports of ammonium nitrate originating in Russia be imposed in the form of a variable duty. This would have the advantage of increasing export prices to a level at which injurious dumping is eliminated, while at the same time not imposing any extra burden on exporters which have subsequently increased export prices to or beyond a non-injurious level.

This approach best reconciles the need to eliminate injurious dumping with the considerations in Recitals 80 and 86.

(88) EFIA was concerned that a minimum price duty could make it difficult for exporters to sell in the Community in the event of a fall in market prices or a change in the rate of the US dollar. To offset this possibility, in either case, the Council notes that the Commission would be prepared to consider the initiation of a prompt review of the measure, if sufficient evidence was provided to this effect, even less than one year following its imposition.

5. Rate of duty

(a) *Target price for Community industry*

(89) In order to establish the price increase of the dumped imports required to remove injury to the Community industry, the weighted average per tonne cost of production of the Community industry for bagged ammonium nitrate has been calculated, and a profit of 5 % added in order to arrive at a target price at which injury is eliminated.

A profit of 5 % on cost has been used in recent anti-dumping cases concerning urea and UAN solutions, and was therefore considered as a reasonable profit margin for nitrogen fertilizers in anti-dumping proceedings.

(90) EFMA alleged that the target profit of 10 % on cost used in the UK regional case, would be a more appropriate level of profit.

(91) The profit margin used in the regional proceeding was not applied on the actual costs of production of the UK industry, but on the costs adjusted to exclude the impact of factors other than the dumped imports. In any event, the UK industry represents only a minority of Community production of ammonium nitrate, and has lower costs than the rest of the Community producers. Therefore the cost structure of the UK industry appears to lend itself to the reasonable expectation of a higher level of profit under normal market conditions than in the case for the Community industry as a whole. Furthermore, it has been established that the Community industry's fixed costs are slightly inflated by the maintenance of over-capacity : (Recital 71). EFMA also claimed that the use of a higher profit figure was more appropriate because of certain costs associated with ammonium nitrate which are not present in the production of urea or UAN solutions. However, EFMA did not forward sufficient evidence to substantiate this claim. In view of these factors, and after considering this matter carefully, it is concluded that 5 % on actual costs remains an appropriate level of profit.

(92) Using the 5 % profit, and taking into account the ECU 10 'quality gap' established in Recital 38, the price increase of the dumped imports required to remove injury is ECU 20,4 per tonne for imports from Russia.

(b) *Duty based on injury elimination*

(93) The dumping margin as regards ammonium nitrate from Russia is ECU 31,3 per tonne.

Since the dumping margin is above the prive increase required to eliminate injury ('injury margin'), the rate of anti-dumping duty will be determined by the injury margin of ECU 20,4 per tonne.

(c) *Calculation of minimum price for the determination of a variable duty*

(94) The minimum price threshold is calculated by taking the export price (ex-frontier) and adding the injury margin plus the costs of freight, insurance and traders' margin, in order to arrive at a cif Community frontier price before duty. Anti-dumping duty will only be collected if the cif import price falls below this level.

(95) In order to calculate the costs incurred between export and import, it is not sufficient to take the difference between the ex-Russian frontier export price and the Eurostat cif price, since the average cif price of Russian imports is brought down by a portion of sub-standard product, while the export price is based on good quality ammonium nitrate only. The above comparison would under-estimate the cost incurred and result in a minimum price which did not fully eliminate injury.

In the absence of full cooperation from importers and exporters of Russian ammonium nitrate, the most reasonable method would be to take the costs incurred between export and imports into the Community of the Lithuanian product, which were established on the basis of verified data in the investigation. This is a uniformly good quality product and is shipped roughly the same distance and under the same conditions as the Russian ammonium nitrate.

The Russian Ministry of Foreign Economic Relations alleged that the figure of ECU 24,7 per tonne resulting from this method was too high. They produced certain data from exporters indicating lower freight rates.

These data cannot be accepted, since they were submitted very late in the proceeding and were not subject to verification, they concerned only a small part of total exports and because they omitted any cost element for agents or other intermediaries which buy and sell the product between the Russian fob and Community cif stages. This is the normal selling route for Russian ammonium nitrate, on the basis of the information supplied during the verification.

When applied to the Russian ammonium nitrate, this results in the following calculation :

Export price (ex-frontier)	ECU 57,8 per tonne
Injury margin	ECU 20,4 per tonne
Freight, insurance etc.	ECU 24,7 per tonne
Total	ECU 102,9 per tonne

(96) The minimum price for bagged imports from Russia should therefore be ECU 102,9 per tonne.

(97) EFIA has claimed that the minimum price should be reduced if the ammonium nitrate is imported in bulk. On this point, it is considered that the existence of a lower minimum price for bulk product would inevitably open up the posibility of avoidance of anti-dumping duty on bagged imports by means of compensatory arrangements for the costs of bags.

Therefore, it is concluded that in order to maintain the effectiveness of the measures, the same minimum price of ECU 102,9 per tonne must be imposed on both bagged and on a bulk product.

6. Undertaking

(98) The Russian Ministry of Foreign Economic Relations has offered to limit exports to the Community to 300 000 tonnes per year and to issue licences only at or above an indicative price which will reflect the 'market price' in the Community. The undertaking is not acceptable, given that the 100 000 tonne limit in the quantitative undertaking covering the UK market, accepted by Decision 94/293/EC, had already been exceeded by February 1995, in spite of the fact that the Russian authorities had undertaken to limit exports to 100 000 tonnes for the 12-month period ending 21 May 1995.

In the light of these circumstances, the Russian authorities have not adequately demonstrated their ability to satisfy the monitoring requirements of the undertaking concerning exports of ammonium nitrate.

In addition :

(99) The figure of 300 000 tonnes is too high. It represents only a 27 % reduction on the volume imported in the investigation period, even if the 70 000 tonnes of Russian ammonium nitrate imported into Austria, Finland and Sweden are included. This is not sufficient to remove injury to the Community industry.

(100) In any event, in this case, given that a 100 000 tonne limit is still in force for imports from Lithuania into the UK, the acceptance of a higher figure for Russian imports to the whole of the Community would give Russia the opportunity of exporting more than 100 000 tonnes to the UK, thus rewarding the Russian exporters for having caused injury in the past, especially in view of having exceeded the above limit in the regional undertaking.

(101) The 'indicative price', although reflecting the highest prices on offer, would not always be equal to, or exceed, the minimum price which eliminates injurious dumping : the Russian authorities request market-related flexibility. In any event, the Ministry would not in practice be able to control the actual price paid.

7. Conclusion

(102) It is concluded that the above undertaking should not be accepted ; the variable anti-dumping duty should therefore be imposed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ammonium nitrate originating in Russia and falling within CN codes 3102 30 90 and 3102 40 90.

2. The amount of anti-dumping duty shall be the difference between ECU 102,9 per tonne net of product and the net cif price, Community frontier before customs clearance, in all cases where this is lower.

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

Article 2

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

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

Done at Brussels, 16 August 1995.

For the Council

The President

J. SOLANA