COMMISSION REGULATION (EC) No 178/98

of 23 January 1998

imposing a provisional anti-dumping duty on imports of potassium permanganate originating in India and the Ukraine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as amended by Regulation (EC) No 2331/96 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In April 1997, the Commission announced by a notice published in the *Official Journal of the European Communities* [3] the initiation of an anti-dumping proceeding with regard to imports into the Community of potassium permanganate originating in India and the Ukraine and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged in March 1997 by the European Chemical Industry Council (CEFIC), on behalf of Community producers representing the total Community production of potassium permangante. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the producers, exporting producers and importers known to be concerned, the representatives of the exporting countries and the complainant, of the initiation of the proceeding. The parties directly concerned were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) A number of exporting producers in the countries concerned, as well as Community producers, Community users and importers made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

(5) The Commission sent questionnaires to all parties known to be concerned and received replies from the complaining Community producers, from one company in India, from one company in the Ukraine and from one company in the USA (originally envisaged as a possible analogue country for the Ukraine). The Commission also received replies from unrelated importers in the Community, one of which was considered meaningful and complete.

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

(a) *Community producers*

— Chemie GmbH Bitterfeld-Wolfen, Bitterfeld, Germany,

— Industrial Química del Nalón, Oviedo, Spain;

(b) *Producers/exporters in the exporting countries*

India

— Universal Chemicals and Industries Pvt. Ltd, Mumbai;

(c) *Producer located in the USA, originally envisaged as analogue country*

— Carus Chemical Company, Peru, Illinois.

(7) The investigation of dumping covered the period 1 April 1996 to 31 March 1997 (hereinafter referred to as 'the investigation period'). The examination of injury and Community interest covered the period 1 January 1992 up to the end of the investigation period (hereinafter referred to as 'the period examined').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(8) The product under consideration is potassium permanganate which has the chemical formula $KMnO_4$. It falls within CN code 2841 61 00.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ C 130, 26. 4. 1997, p. 4.

Potassium permanganate is a compound of manganese, potassium and oxygen whose manufacture requires two basic raw materials: caustic potash (KOH) and manganese dioxide or pyrolusite ore (MnO_2). The product is manufactured in three grades: technical (97 to 98 % purity of $KMnO_4$, in the form of crystalline powder), free flowing (containing an anti-caking agent) and pharmaceutical (minimum 99 % purity of $KMnO_4$ in the form of crystals). The different grades will hereinafter be referred to as 'product types'.

All grades are obtained from the same production process and show the same basic chemical properties. It was therefore concluded that all grades should be considered as one product for the purposes of the investigation.

Potassium permanganate is mainly used for potable water treatment, waste water treatment, chemical and pharmaceutical manufacture, aqua culture, metal refining, metal surface cleaning, disinfectant in agriculture and veterinary practices, gas purification, process gas deodorisation, bleaching and special treatments in textile industry, radioactive decontamination, gas turbine cleaning and submarine air purification.

2. **Like product**

(9) The Commission found that potassium permanganate produced and sold on the domestic market in India and that exported to the Community from the countries concerned as well as that produced and sold by the Community industry in the Community market had effectively identical physical characteristics and uses and were thus like products within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation').

C. **DUMPING**

1. **Normal value**

(a) *India*

(10) In order to establish normal value, the Commission first analysed whether domestic sales were representative in accordance with Article 2(2) of the Basic Regulation. In this respect, for the only cooperating producer, it was established that the total domestic sales of the product concerned represented more than 5 % of the sales volume destined for the Community.

(11) It was then examined whether total domestic sales of each product type constituted 5 % or more of the sales volume of the same product type exported to the Community.

As it was found that sales of both product types were representative, the Commission then assessed whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2(4) of the Basic Regulation. For one product type, where the volume of sales below production cost was less than 20 % of sales, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. For the other product type, where the volume of transactions made at a loss was equal to or higher than 20 %, but not higher than 90 % of sales, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable domestic sales.

(b) *Ukraine*

1. Analogue country

(12) Since the Ukraine is considered to be a non-market economy country, an analogue market economy country had to be selected for the establishment of normal value in accordance with Article 2(7) of the Basic Regulation. It was specified in the notice of initiation that India or the USA were considered for that purpose. No comments were received within the time limit specified in the notice of initiation from any authority in the Ukraine or any interested party.

However, during the investigation, it appeared that the level of cooperation by the United States producer was not sufficient to enable the Commission to verify properly the level of prices paid on the United States market and the costs of production. Consequently, the Commission examined whether India could constitute a more appropriate choice. From the investigation it appeared that India is more similar to the Ukraine in terms of its production process and production volume. Therefore, the Commission finally considered that, in accordance with Article 2(7) of the Basic Regulation, the most reasonable choice of analogue country in this case was India.

2. Normal value

(13) For the reasons indicated above, normal value was established on the basis of the domestic prices of the Indian producer.

The investigation showed that the domestic sales in India represented more than 5 % of the total Ukrainian export sales to the Community, both on an overall basis and with regard to the only product type exported from the Ukraine to the Community.

(14) In accordance with Article 2(4) of the Basic Regulation the Commission then assessed for the product type in question whether sufficient sales had been made in the ordinary course of trade. As it was found that the volume of transactions made at a loss was equal to or higher than 20 %, but not higher than 90 % of sales, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable domestic sales.

2. **Export price**

(a) *India*

(15) As the exporting producer made export sales to the Community directly to independent importers, in accordance with Article 2(8) of the Basic Regulation, export prices were established on the basis of the prices actually paid or payable by these independent customers.

(b) *Ukraine*

(16) The investigation showed that the exports of the cooperating company in the Ukraine were made directly to an independent importer in the Community. The export prices were therefore based on the prices actually paid or payable for the product sold to the Community in accordance with Article 2(8) of the Basic Regulation.

(17) As the comparison of the data concerning exports to the Community provided by the cooperating Ukrainian exporter and Eurostat statistics indicated that this company's exports represented almost all those reported by Eurostat, they were considered representative of all Ukrainian exports of the product concerned to the Community.

3. **Comparison**

(18) For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed, and demonstrated to affect price comparability. In accordance with Article 2(10) of the Basic Regulation, these adjustments were made, in respect of packing, transport, insurance, handling and ancillary costs, indirect taxes and import charges, credit costs and commissions.

(19) As the product concerned is sold in both drums and bags on the Indian domestic market whilst all export sales are in drums, it was decided to adjust normal value with a view to deducting all cost of packing so that normal value can be based on all domestic sales of the product concerned.

(20) The exporting Indian producer claimed an allowance for domestic transport costs which included transport costs incurred by the company in moving the product from one of the plants to a depot. This claim could not be granted due to the fact that, in accordance with Article 2(10)(e) of the Basic Regulation, an adjustment shall only be made for costs incurred for conveying the product concerned from the premises of the exporter to an independent buyer. In this case the plant and the depot can be considered to be part of the same economic and legal entity and the depot as an extended factory gate.

(21) The exporting Indian producer also claimed an allowance for the credit cost of sales on the domestic market and requested that the actual payment date be used. This claim was rejected on the grounds that, in accordance with Article 2(10)(g) of the Basic Regulation, an adjustment can only be given for the number of days agreed at the time of the sale, as only the expense corresponding to that number of days can be considered to have influenced the exporter's decision.

(22) The Indian company also claimed an adjustment for differences in levels of trade on the grounds that it sold different quantities to different types of customers. However, they were unable to demonstrate consistent and distinct differences in functions and prices for the allegedly different levels of trade in the Indian domestic market. In view of the above, no adjustment was granted for differences in level of trade.

(23) The exporting producer in the Ukraine claimed adjustments for credit costs and for the level of trade which are both linked to the specific arrangement between this company and its sole importer in the Community. The positive adjustment sought for credit costs could not be granted due to the fact that there was no evidence of an influence on the prices charged.

The adjustment for level of trade was claimed on the grounds that this importer finances the purchase of raw materials and prepays deliveries. This could not be accepted since the export price was at an identical level of trade to the normal value used for the comparison.

4. Dumping margin

1. General method

(24) Pursuant to Article 2(11) of the Basic Regulation, the dumping margins were established on the basis of a comparison between the weighted average normal value and the weighted average export prices at ex-factory level and at the same level of trade.

2. Dumping margin

(a) *India*

(25) The dumping margin expressed as a percentage of the cif price at Community frontier level was as follows:

— Universal Chemicals and Industries Pvt. Ltd, Mumbai 6,8 %.

As this company is deemed to represent 100 % of Indian production of the product concerned, the residual dumping margin provisionally established is also 6,8 %.

(b) *Ukraine*

(26) For the Ukrainian exporting producer, the weighted average normal value fob India national frontier was compared with its own weighted average export price fob Ukraine national frontier at the same level of trade.

The provisionally established dumping margin is 40,4 %, expressed as a percentage of the cif price at Community frontier level.

D. COMMUNITY INDUSTRY

(27) The two Community producers which cooperated with the investigation account for the total production of potassium permanganate in the Community. Since neither of them has imported the product concerned from India or the Ukraine, or is related to any producers in the countries concerned, they therefore constitute the Community industry in accordance with Article 4(1) of the Basic Regulation.

E. INJURY

1. Preliminary remark

(28) Following an expiry review, a definitive anti-dumping duty on imports of potassium permanganate originating in the People's Republic of China was imposed by Council Regulation (EC) No 2819/94 ([1]).

In this context, the fact that the Community industry is still in the process of recovering from the effects of past dumping was a factor, amongst those due to be evaluated in accordance with the provision of Article 3(5) of the Basic Regulation, found to have a particular bearing on the Community industry's state during the period examined.

2. Collection of injury data

(29) The Commission requested and obtained from the two complaining companies information which allowed it to establish various injury indicators. It should, however, be noted that one of the Community producers is the sole remaining operation of the former Bitterfeld Kombinat and is still in the process of being privatised. Therefore, in view of the particular situation of that Community producer, it was considered appropriate not to take into consideration all information which might be affected by the said situation, namely that relating to its cost of production and profitability.

3. Total consumption on the Community market

(30) In calculating total apparent Community consumption of potassium permanganate, the Commission added:

— the total sales volume in the Community of the two Community producers of the product concerned, and

— the total imports into the Community of the product concerned from all third countries, including India and the Ukraine.

(31) With a view to establishing, for the whole period examined (1992 to March 1997), consistent figures covering the enlarged Community of 15, the total imports were based on relevant Eurostat statistics, as declared under CN code 2841 61 00, combined with national statistics of Austria, Finland and Sweden for the period before their accession to the Community.

On this basis, the apparent Community consumption of potassium permanganate increased from 3 087 tonnes in 1992 to 3 147 tonnes in the investigation period, i.e. a moderate increase of 2 %.

4. Cumulative assessment of the effects of the dumped imports

(32) In accordance with Article 3(4) of the Basic Regulation, the Commission examined whether the cumulation of the imports from the two countries concerned in the present anti-dumping proceeding was warranted.

([1]) OJ L 298, 19. 11. 1994, p. 32.

In this respect it has to be noted that:

— the total volume of dumped imports for the product concerned originating in India rose from 278 tonnes in 1992 to 400 tonnes in the investigation period, equivalent to an increase in market share from 9 to 12,7 % for the same period,

— the total volume of dumped imports for the product concerned originating in the Ukraine increased from 0 tonnes in 1992 to 176 tonnes in the investigation period, corresponding to a market share of 5,6 % in the investigation period.

The individual volume of imports from India and the Ukraine and their market share of 12,7 and 5,6 % respectively were therefore not negligible during the investigation period. Furthermore, dumping margins, which were not *de minimis*, were established for both countries.

(33) As far as the conditions of competition between the imports from both countries are concerned, certain parties have claimed that, due to differences in these conditions and in particular in the levels of price undercutting, the impact of the Indian and Ukrainian imports should not be assessed cumulatively.

The investigation however showed that there were no significant differences in quality between the Indian and Ukrainian products and they were sold to the same customers through similar sales channels. Furthermore, the price behaviour of exporters in both countries, as reflected in the levels of price undercutting, was comparable in view of the significant undercutting margins. It was accordingly considered that the conditions of competition on the Community market between potassium permangate imported from India and the Ukraine respectively as well as between the potassium permanganate imported from both countries and that produced in the Community were similar.

(34) On this basis, the Commission concluded that the requirements laid down in Article 3(4) of the Basic Regulation were met and that the effect of the dumped imports from both countries should be assessed cumulatively for the purpose of the injury analysis.

5. **Cumulated volume and market share of the dumped imports**

(35) The total volume of imports from India and the Ukraine taken together rose from 278 tonnes in 1992 to 576 tonnes in the investigation period, an increase of 107 %, resulting in a twofold increase in the combined market share from 9 to 18,3 % between 1992 and the investigation period.

6. **Prices of the dumped imports and undercutting**

(36) Aggregate data from Eurostat and the National Statistical Offices of Austria, Finland and Sweden showed that the import price of potassium permanganate originating in India and the Ukraine fell by 12 % between 1992 and 1995 and then increased by 9 % between 1995 and the investigation period, resulting in an overall decrease of 3 % for the whole period examined.

(37) For the investigation period, the Commission compared the prices of the Community producers with the prices of the Indian and Ukrainian exporters at the same level of trade. The latter were based on sales figures, adjusted to reflect the customs duty paid, as well as expenses incurred for loading and warehousing.

The prices of the Community producers were adjusted to an ex-factory level by deducting transport and insurance costs and set at levels of trade considered to be comparable to those of the Indian and Ukrainian imports, by deducting credit costs.

(38) The results of the comparison, when expressed as a percentage of the Community producers' selling prices during the investigation period, showed significant undercutting margins of 26 % for the Ukraine and 8,4 % for India on average.

7. **Situation of the Community industry**

(a) *Production*

(39) The production of the product concerned fluctuated during the period examined. These fluctuations, which resulted from a series of exceptional events, caused distortions which had an effect on the trends over the period examined:

— the production of one of the producers, which is producing potassium permanganate amongst other products, was nil in 1992 and lasted for only three months in 1993 due to the pressure exerted by dumped Chinese imports. The company nevertheless continued to sell from stock during these two years,

— following a drought suffered by the southern part of Spain, there was an unusually high consumption of potassium permanganate on the Spanish market in 1995.

(40) Overall, the production of the product concerned by the Community industry increased from 1 688 tonnes in 1992 to 3 141 tonnes in the investigation period, an increase of 86 %. Half of this increase was attributable to sales to export markets outside the Community with quantities varying from 161 tonnes exported in 1992 to 837 tonnes in the investigation period, i.e. 27 % of the total quantity sold during that period.

(b) *Capacity utilisation rate*

(41) Due to the irregular production mentioned above, which resulted in the starting point to be very low, the capacity utilisation rate between 1992 and the investigation period increased from 22,5 to 41,9 %.

(c) *Sales volume*

(42) The volume of sales by the Community industry on the Community market increased during the period examined from 1 812 tonnes in 1992 to 2 301 tonnes in the investigation period, representing an increase of 26 %.

(d) *Market share*

(43) The comparison of the volume of sales in the Community with the apparent Community consumption showed that the market share held by the Community industry increased from 58,7 % in 1992 to 71,3 % in 1995, then decreased to 67 % in 1996 and increased again to 73 % in the investigation period.

(e) *Price depression*

(44) It should be noted that, except in Spain, where price lists were in use, potassium permanganate sales are carried out on a spot basis and therefore prices to distributors vary throughout the year according to market conditions.

In this context, the average selling price of the Community industry fell by 10 % from 1992 to the investigation period. It must be stressed that this decrease was already effective in 1994, when measures were imposed against the People's Republic of China. However, the Community producers were never able to regain previous price levels after the imposition of anti-dumping duties on Chinese imports.

(f) *Profitability*

(45) The overall profitability of the product concerned was irregular on the Community market. Despite its successful efforts to reduce manufacturing costs, the Community producer whose data have been used to assess profitability, recorded losses from 1992 to the investigation period.

(46) The trend showed an improvement from 1992 to 1995 with losses varying from index — 100 in 1992 to index — 6 in 1995. This was the result of a 16 % reduction in manufacturing costs linked with better capacity utilisation. The situation in 1995 was, as noted above, the result of exceptional climatic circumstances which led to a significant increase of the quantity sold. However, in 1996 and during the investigation period, the situation again deteriorated, with indexed losses (1992 = — 100) amounting to — 53 and — 75 respectively.

(g) *Employment*

(47) Employment in the Community industry decreased by 8 % from 1992 to the investigation period in terms of hours effectively worked. It should be underlined that more than 80 % of the personnel employed was composed of production employees who, in the case of the Community producer, also worked on the production of other products during the periods of low activity for potassium permanganate. It is therefore probable that without this fexibility the situation in the Community would have resulted in more redundancies in geographical areas where both Germany and Spain register high unemployment rates.

(h) *Investment*

(48) When expressed as a percentage of total turnover, investments increased from 4,3 % in 1992 to 5,7 % in the investigation period.

8. **Conclusion on injury**

(49) The Community industry has been facing the effects of dumping since the beginning of the period examined, firstly due to the imports from the People's Republic of China, later by imports from India and the Ukraine. Under these circumstances, the pressure exerted on the prices of the Community industry, which decreased by 10 % from 1992 to the investigation period, led to the persistence of a weak financial situation.

The price depression prevented recovery from the effects of past dumping and the financial situation, although slightly improved, continued to be negative.

(50) In the light of the foregoing analysis, it is the view of the Commission that, overall, positive evidence showed that the Community industry has suffered injury which can be considered as material within the meaning of Article 3(1) of the Basic Regulation.

F. CAUSATION

(51) The Commission examined whether the injury suffered by the Community industry had been caused by the dumped Indian and Ukrainian imports and whether other factors had caused, or contributed to, that injury.

1. Effect of the dumped imports

(52) In examining the effect of the dumped imports, it was found that the Community industry could not benefit fully from the effects of the measures imposed against the People's Republic of China, since the re-establishment of fair trading conditions with that country was immediately undermined by an increase in low priced, dumped imports from India and the Ukraine.

(53) It was established that over the period examined, i.e. from 1992 to the investigation period, the decrease of 291 tonnes in the imports originating in the People's Republic of China had been totally offset by the 298 tonnes increase in the dumped imports from India and the Ukraine.

(54) With regard to prices, the Commission established that the imports subject to this proceeding were in the same price range as imports from the People's Republic of China, before the reduction of the import volumes originating in that country which took place in 1995. Moreover, these import prices from the countries concerned did not improve significantly afterwards. It could therefore be confirmed that imports from the countries concerned by the proceeding, due to their price level, had a clear undermining effect on the recovery of the Community industry.

(55) The potassium permanganate produced in the Community and the potassium permanganate imported from India and the Ukraine are in direct competition with each other, essentially on the basis of price. This price-based competition is explained by the fact that potassium permanganate is a bulk product, with moreover no significant differences of quality or applications between the imported product and the Community produced one.

(56) Price difference is the major factor determining sales. In the course of the investigation it was established that the minimum import volume per transaction is around 15 tonnes. As a consequence, even a one-off sale undercutting the Community producers' prices can already represent a 0,5 % gain in overall market share. Such a transaction can therefore have a perceptible and immediate impact on the situation of the Community market.

(57) It was also established that in years when consumption was not affected by any exceptional circumstances, the impossibility for the Community industry to improve its profitability coincided with the volume and growth of the imports from India and the Ukraine at dumped prices. In a price-sensitive market, this low-price policy had the effect of depressing the prices of the Community industry.

(58) It was indeed found that, as a result of systematic price undercutting by the Indian and Ukrainian imports, the Community industry had to adjust its prices downward to the market situation. This defensive behaviour on the part of the Community industry is explained by the fact that the industry strongly needs continuous production cycles and needed to recover from low production years. It could not risk seeing its costs per unit increase as a result of lost sales volumes.

(59) The recovery of the Community industry from the impact of dumped Chinese imports was thus heavily hampered by the combination of the high-volume and dumped prices of Ukrainian and Indian imports concerned.

(60) The Commission therefore concluded that the dumped imports from the countries concerned had a considerable negative impact on the situation of the Community industry during the period under consideration, on the one hand by impeding its recovery from past dumping practices by the Peoples' Republic of China, and, on the other hand, by influencing the situation negatively, notably in terms of profitability.

2. Effect of other factors

(61) It was examined whether factors other than the low-priced imports from India and the Ukraine, might have led or contributed to the weak situation of the Community industry and in particular whether imports from countries other than the two subject to this proceeding might have influenced this situation.

(a) *Imports from other third countries*

(62) Imports from countries not concerned by this proceeding decreased from 997 tonnes in 1992 to 270 tonnes in the investigation period, a 73 % decrease. Amongst these third countries the United States of Americaa was the major supplier to the Community market during the investigation period. The total Community market share held by imports from third countries other than India and the Ukraine during the investigation period only amounted to 8,6 %. As regards prices, the average price of these imports, as given by Eurostat, increased from 1992 to the investigation period to reach ECU 1705/tonne, a figure 35 % above the prices of Indian and Ukrainian imports at a comparable cif level.

(63) It is therefore considered that, although the Chinese imports had had an impact on the Community industry until 1994, imports from sources other than the countries subject to the current proceeding could not be considered to have caused the precarious situation of the Community industry.

(b) *Development of consumption on the Community market*

(64) It has been argued that the injury suffered by the Community industry was due to the contraction of demand on the Community market.

(65) It should however be recalled that the decrease in the industrial uses of potassium permanganate has been balanced in recent years by the increase in bio-technology uses and above all water treatment applications. As a consequence, apparent consumption has been rather stable on the Community market since it only slightly increased by + 2 % from 1992 to the investigation period. Although this evolution in the pattern of consumption implies a move to more numerous and smaller customers which can only be reached through a further development of the distribution networks, it cannot be considered detrimental to the Community industry and does not explain the surge of the imports concerned which face the same change in the pattern of users. Indeed, water treatment applications are likely to develop in parallel with increased public awareness of environmental issues. The technology and added value linked to it are more price-rewarding than the ageing and disappearing industrial applications.

(66) These effects, expected in the longer term, could already be felt in 1995 when, because of exceptional climatic circumstances, consumption on the Community market suddenly increased to the benefit of all producers. However, when these exceptional effects ceased, the Community industry was again confronted with low-priced imports from the countries concerned in a market where consumption had returned to past levels. The Community industry incurred significant losses again, as a result from this price pressure.

(67) It is therefore considered that the variation in the apparent Community consumption, though noticeable, could not be considered a material cause of the injury suffered by the Community industry.

(c) *Competitiveness of the Community industry*

(68) It has been argued by certain parties that the costs of the Community industry were too high to compete on the world market as a consequence of its structures and of the — allegedly outdated — production processes it uses.

(69) It cannot be denied that one Community producer of the product concerned is going through a restructuring phase due to the fact that until recently it was subject to a State-planned economic system. It should nevertheless be recalled that the costs and profitability of the Community industry were assessed exclusively in the light of the verified data relating to the other Community producer.

(70) As far as this second company is concerned, it was established that it could prove, with the significant increase in its export sales at profitable prices, that it was able to compete on the world market, mainly that of the United States of America. Indeed, this Community producer increased the volume of its export sales from 21 tonnes in 1992 to 572 tonnes in the investigation period and was able to achieve in this latter period, on export markets, prices 10 % higher than on the Community market. The increased sales, and therefore production, allowed the unit costs to decrease, in addition to the measures improving the general efficiency which proved to have been successful.

(71) Moreover, although the production processes are difficult to compare *per se*, it could be established that no particular inefficiency was to be found in terms of cost per tonne for the product concerned produced in the Community.

(d) *Conclusion on causation*

(72) It is considered that the dumped imports from India and the Ukraine, when taken in isolation, have caused material injury to the Community industry. This conclusion is based on the various elements set out above, especially the quantities and prices of the imports concerned, which resulted in strong downward price pressure on the Community market for the product concerned and in particular on the prices and profitability of the Community industry.

G. COMMUNITY INTEREST

1. Preliminary remark

(73) The Commission provisionally examined, on the basis of all evidence submitted, whether, despite the presence of injurious dumping, there were compelling reasons leading to the conclusion that it would not be in the Community interest to impose measures in this particular case. For this purpose, and pursuant to Article 21(1) of the Basic Regulation, the Commission considered the impact of possible measures for all parties involved in the proceeding, and also the consequences of not taking measures. In order to provide information for this assessment, the Commission sent questionnaires to producers, importers and known users of the product concerned, with a view to evaluating their economic interests.

2. Interest of the Community industry

(74) The potassium permanganate industry in the world has reached maturity in terms of technology and production process, implying that the consumption per tonne produced of, for example, raw materials and energy, does not vary significantly amongst producers operating under normal market conditions. In this context, the good export performances of the Community industry should be recalled, as they are a clear indicator of its ability to compete under fair conditions on the world market.

(75) It is considered that without measures to correct the effects of the dumped imports the Community industry will continue to face the undercutting established, and will not be in a position to regain profitability.

(76) In particular, the absence of measures would seriously impair the privatization process of the Community producer situated in one of the new German *Länder*. The restructuring this company underwent and is still undergoing since the change in the economic system would prove to have been in vain at the exact time when it is in a position to benefit from its efforts and have access to private investors.

(77) As far as the Spanish producer is concerned, its ongoing efforts to reduce costs show that it is not ready to abandon the production of potassium permanganate, and therefore needs the detrimental effects of the dumped imports to be corrected. Nevertheless, it should be stressed that the industrial group which until now has backed the production of the product concerned despite its critical situation, might decide to cease this activity in the absence of any reasonable hope of price increases in the Community.

(78) It can therefore be concluded that, in the absence of measures, the existence of the Community industry, situated in two regions of the Community already seriously affected by industrial restructuring, would ultimately be at risk. This situation would not be the result of normal conditions of competition.

3. Interest of traders

(79) Companies trading in the product concerned in the Community appear to be mainly distributors of a wide range of chemical products. The biggest traders buy the product concerned indiscriminately from Community producers or producers in third countries, wherever the price is the lowest. The significant quantities purchased are resold in numerous transactions of smaller quantities to parties trading smaller volumes of the product concerned. These parties in turn usually repeat the same distribution steps at their own level. The bigger traders expressed their opposition to a possible imposition of anti-dumping measures which would allegedly lead them to stop their purchases of potassium permanganate from the countries concerned. The second type of traders in the Community, i.e. those which trade the product concerned in smaller quantities, advocated a diversity of supply on the Community market in order to maintain a secure level of supply and a fair choice amongst competing producers. These traders were in favour of the imposition of measures.

(80) It view of the fact, however, that the measures proposed are in no way prohibitive, imports could continue to take place after their imposition. Moreover, most traders who have acted as importers during the investigation period also purchase Community-produced potassium permanganate. Their main function consists of distributing the products, whatever their origin be. Therefore, it cannot be expected that this level of economic activity will be reduced, in particular in the light of the stable consumption of the product concerned during the period examined.

(81) Finally, as far as the sole importer of the Ukrainian product is concerned, it should be noted, that, after numerous invitations to cooperate, it provided the Commission with incorrect or misleading information on its resale margin and profit rate. Its real profit rate can be assumed to be substantial on the basis of the evidence available, and it is therefore considered that possible measures against the Urkaine would in no way put the existence of this company at risk.

4. **Interest of users of the product concerned**

(82) Although questionnaires were sent to a number of users of potassium permanganate in the Community, including those most likely to be affected by possible measures, none of them cooperated fully by replying to the questionnaire in a meaningful way.

(83) This can be explained by the fact that the important industrial uses of potassium permanganate are gradually being abandoned. One of the few companies using potassium permanganate in an intensive way for the production of other chemical products in the Community decided to switch its production process to another technology using other raw materials. The low level of representations received and cooperation obtained from users of potassium permanganate is also linked with the low cost impact of potassium permanganate in the end-product, at least on the basis of the evidence available. Indeed, it could be established that potassium permanganate is almost only used in extremely low quantities when compared with other inputs. In water treatment for example, the cost linked with the purchase of potassium permanganate is insignificant given the minute quantities used in this application.

(84) Finally, the price of potassium permanganate at the level of the end-user is in any case determined more by the costs and profits of the numerous companies in its distribution chain than by the ex-factory price.

(85) On that basis, and in view of the level of the duties to be imposed, it is considered that the impact of any possible measures on users of potassium permanganate would be negligible.

5. **Conclusion on the Community interest**

(86) In examining the various interests involved and all the above aspects, the Commission provisionally considers that there are no compelling reasons not to take action against the imports in question by restoring a fair competitive situation and preventing further injury to the Community industry. Leaving the Community industry without adequate protection would add to its difficulties at a time when it is beginning to feel the effects of a progressive recovery from past dumping.

H. **PROPOSED MEASURES**

(87) For the purpose of establishing the level of the provisional duty, account was taken of the level of dumping found and the amount of duty necessary to eliminate the injury suffered by the Community industry.

1. **Injury elimination level**

(88) Since the injury was mainly in the form of financial losses, it was considered that the removal of such injury would be achieved through the establishment of a non-injurious price level, i.e. a price level which would prevail in the absence of imports from the two countries made at dumped prices. In the circumstances of this case, it can be assumed that such non-injurious price levels would allow the Community industry to cover its costs and achieve a reasonable profit.

(89) In this respect, the Commission established that a price level considered adequate to remove the injury should be based on the weighted average cost of production of the Community producer for which this data had been established during the investigation, together with a profit of 7 % on turnover. This profit rate was considered to be an appropriate minimum in view of the capital invested and, more particularly, of the rate of return which the Community industry could reasonably expect in the absence of injurious dumping.

(90) This injury elimination level was then compared with the weighted average cif import prices reported by the exporters concerned, at the same level of trade. The latter were based on sales figures, adjusted to reflect the customs duty paid as well as the expenses incurred for loading and warehousing. The non-injurious price level was adjusted to an ex-factory level by deducting transport and insurance costs and set at levels of trade considered to be comparable with those of the Indian and Ukrainian imports, by deducting credit costs.

2. **Form and level of the provisional measures**

(91) Since for each country concerned the injury elimination margin thus established is higher than the dumping margin, the rate of the provisional anti-dumping duty should be based on the respective dumping margins.

(92) Since the cooperating exporting producer in India represented the totality of exports of the product concerned to the Community, and in order to avoid possible circumvention of the measures, the residual duty rate was set at the same level as the individual company rate.

(93) As regards the form of the measures, particular consideration was given to the fact that the injury established consisted mainly of a depression of the Community producers prices, together with the negative impact of these low prices on their profitability. The Commission therefore provisionally considers that the appropriate way to remedy injury is the imposition of a variable duty based on a minimum price. This minimum price, corresponding to the dumping margins added to the export prices at cif level, should be ECU 1 475/tonne for India and ECU 1 567/tonne for the Ukraine. The difference in the minimum prices can be explained by the fact that different product types were exported by the exporters from the countries concerned.

I. **RIGHTS OF INTERESTED PARTIES**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of potassium permanganate falling within CN code 2841 61 00 originating in India and the Ukraine.

2. For the product concerned referred to in paragraph 1 originating in India, the amount of anti-dumping duty shall be the difference between the minimum import price of ECU 1 475 per tonne and the cif Community frontier price in all cases where the cif Community frontier price per tonne is less than the minimum import price. No duty shall be collected where the cif Community frontier price per tonne is equal to or higher than the minimum import price.

3. For the product concerned referred to in paragraph 1 originating in the Ukraine, the amount of anti-dumping duty shall be the difference between the minimum import price of ECU 1 567 per tonne and the cif Community frontier price in all cases where the cif Community frontier price per tonne is less than the minimum import price. No duty shall be collected where the cif Community frontier price per tonne is equal to or higher than the minimum import price.

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

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

Article 2

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

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

Article 3

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

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

Done at Brussels, 23 January 1998.

For the Commission
Leon BRITTAN
Vice-President