COMMISSION REGULATION (EC) No 617/98

of 18 March 1998

imposing a provisional anti-dumping duty on imports of polysulphide polymers originating in the United States of America

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. Initiation

(1) In June 1997, the Commission announced by a notice (hereinafter referred to as 'notice of initiation') 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 polysulphide polymers originating in the United States of America and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged in May 1997 by Akcros Chemicals GmbH & Co KG, Germany (hereinafter referred to as 'Akcros'), the sole Community producer of polysulphide polymers. 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.

2. Investigation

(3) The Commission officially advised the exporting producer and importers known to be concerned, the representatives of the exporting country and the Community producer, 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) The exporting producer in the country concerned, as well as the Community producer, Community users and importers made their views known in writing. The exporting producer requested a hearing, which was granted.

(5) The Commission sent questionnaires to all parties known to be concerned and received replies from the Community producer, from the exporting producer in the USA and from its two related importers in the Community. The Commission also received replies from five users in the Community, three of which were considered sufficiently complete so that they could be used for the assessment of Community interest.

(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 verification visits at the premises of the following companies:

(a) *Community producer*

— Akcros Chemicals GmbH & Co. KG, Greiz-Dölau, Germany.

(b) *Producer/exporter in the exporting country*

— Morton International Inc., Chigaco, United States of America (hereinafter referred to as 'Morton').

(c) *Related importers in the Community*

— Morton International GmbH, Mannheim, Germany,

— Morton International Limited, Hounslow, United Kingdom.

(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 1994 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 polysulphide polymers (hereinafter referred to as 'PSP'). It falls within CN code ex 4002 99 90.

PSP is a synthetic rubber also called 'thioplast' by the Community industry or 'thiokol' by the exporting producer. PSP is a saturated synthetic

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ C 187, 19. 6. 1997, p. 4.

substance, obtained by the reaction of aliphatic dihalides with a sodium polysulphide. It is generally vulcanized (i.e. further treated to improve strength and elasticity) with the classical type of vulcanizing agents.

There are several types of PSP which are produced in the USA and in the Community. The mechanical properties of certain types are inferior to those of other grades of synthetic rubber but have the advantage of being resistant to solvents.

(9) PSP is the basic polymer used in the manufacture of sealing compounds. In the Community, PSP is mainly used for the production of glass insulation sealant which accounts for around 75 % of the consumption. It is also used for construction applications (joint tape or expansion joint in walling, between precast concrete cladding panels, or as a sealing perimeter joint between window frames and surroundings) and other special applications, such as in the aerospace industry, in environmental protection for petrol stations or for floor coatings in chemical plants.

In the insulating glass segment, 85 % of sealing compounds used are made of PSP. In the USA, PSP consumption is far lower than in the Community, namely around 25 % of Community consumption, although PSP is used for the same applications as in the Community.

2. **Like product**

(10) The investigation has also shown that PSP produced and sold on the domestic market in the USA and PSP exported to the Community from the country concerned had essentially the same basic physical and chemical characteristics and uses as PSP produced and sold by the Community industry on the Community market and that they therefore are in direct competition in the Community market. In this respect, it appeared, on the basis of the available information, that all industrial users located in the Community could process both PSP produced in the Community and PSP imported from the USA.

(11) Some industrial users stated that certain types of PSP imported from the USA were of higher quality than those produced in the Community. In this respect, it should be noted that quality does not change the basic characteristics of the product concerned and that as far as such differences are concerned, users could process both the imported product and the Community-produced product although some minor alterations in their production process might be necessary. Community produced and imported products are therefore interchangeable. In any event any such differences in physical characteristics cannot lead to the conclusion that the product produced and sold by the Community industry and the product concerned imported from the USA cannot be considered as one like product.

(12) On the basis of the above, it was therefore concluded that the PSP produced and sold by the Community industry and the PSP produced and sold in the USA are alike, within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation'), to the PSP imported into the Community and originating in the USA.

C. **DUMPING**

1. **Normal value**

(13) In order to establish normal value, the Commission first analysed whether domestic sales in the exporting country concerned were representative in accordance with Article 2(2) of the Basic Regulation. In this respect it was established that the total domestic sales of the product concerned in the United States market represented more than 5 % of the volume exported to the Community.

(14) 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.

For those product types meeting the 5 % test, the Commission assessed whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2(4) of the Basic Regulation. For all product types which were sold in representative quantities, the weighted average domestic selling price was found to be above the weighted average unit cost. Furthermore, the volume of sales below unit cost was less than 20 % of sales. Therefore, for these product types normal value was established on the basis of the weighted average prices actually paid for all domestic sales.

Where, per product type, the volume of domestic sales was lower than 5 % of the volume destined for export to the Community, domestic sales were considered insufficient in the meaning of Article 2(2) of the Basic Regulation and were therefore disregarded. In these cases, normal value was constructed in accordance with Article 2(3) and (6) of the Basic Regulation. For each such product type, normal value was calculated on the basis of all costs of manufacturing plus all selling, general and administrative expenses incurred by this company and a reasonable amount for profit. The amount for profit was established on the basis of the weighted average profit made on domestic sales in the ordinary course of trade of the product concerned.

2. **Export price**

(15) The exporting producer made all export sales of the product concerned to the Community via two related importers. For that reason, in accordance with Article 2(9) of the Basic Regulation, the export prices were constructed on the basis of the prices at which the imported product was first resold to an independent buyer, with adjustments being made for all costs incurred between importation and resale and for a profit margin. In view of the fact that no unrelated importers cooperated in the present investigation, the Commission used a profit margin of 5 % for calculating the export price, which appears to reflect appropriately the functions carried out by these related importers.

3. **Comparison**

(16) 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, credit costs and after-sales costs.

(17) The exporting producer 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 of that number of days can be considered to have influenced the decision on the price level agreed.

(18) The company also claimed an allowance for a sustained movement in exchange rates during the investigation period with regard to one European currency, the D mark, and requested that an adjustment be made for the entire investigation period. This claim could not be accepted for the purpose of the provisional determination since, in accordance with Article 2(10)(j) of the Basic Regulation, this allowance can only be granted to reflect a sustained movement and should thus be made only for the specific period in which such a sustained movement takes place. In the present case it was found that the movement in exchange rates for which an allowance was claimed was not fully sustained throughout the investigation period. In addition, the adjustment was requested for the movement of the D mark versus the US dollar, whereas a movement in the opposite direction occurred regarding the British pound versus the US dollar which partly offset the effect on the dumping margin caused by the revaluation of the US dollar versus the D mark. This issue will be reexmained when definitive findings are established.

4. **Dumping margin**

(19) Pursuant to Article 2(11) of the Basic Regulation, the dumping margin was established on the basis of a comparison between the weighted average normal value and the weighted average export price both at an ex-factory level and at the same level of trade. Although the analysis has concluded that the imports concerned target certain Member States, it was not necessary to apply the provisions of the second sentence of Article 2(11) of the Basic Regulation as almost all transactions were made at dumped prices.

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

— Morton International Inc., Chicago: 49,6 %.

As this company is deemed to represent 100 % of United States production of the product concerned, the residual dumping margin provisionally established is also 49,6 %.

D. **COMMUNITY INDUSTRY**

(21) Akcros is the only Community producer of PSP and therefore constitutes the Community industry, within the meaning of Articles 4(1) and 5(4) of the Basic Regulation.

E. INJURY

1. Collection and confidentiality of injury data

(22) For the purpose of the examination of injury in the present proceeding, data relating to the period examined (1 January 1994 to the investigation period ending 31 March 1997) was considered. The geographical scope of the investigation was the Community of 15 Member States.

(23) Since there is only one Community producer and one producing exporter in the USA, in accordance with Article 19 of the Basic Regulation the data relating to injury has been indexed in order to preserve the confidentiality of the data submitted.

2. Consumption in the Community

(24) Total consumption in the Community was established on the basis of Morton's and Akcros' sales, in quantity and value, to independent customers in the Community market. From 1994 up to the investigation period the volume (expressed in tonnes) of consumption in the Community increased by 5 %. During the same period, consumption in value terms decreased by 1 %. The year-to-year analysis of the evolution of consumption indicates a negative trend in sales prices in the market which started in 1995, continued throughout 1996 and became even more negative during the investigation period.

3. Sales of dumped imports in the Community

1. *Volume and value of sales made by Morton*

(25) Morton exported its PSP to the Community via two related sales companies, one located in the United Kingdom and, since 1995, one located in Germany. From 1994 to the end of the investigation period, Morton's sales to unrelated customers in the Community market increased both in terms of volume (+ 5 %) and value (+ 1 %). The fact that the volume sold in the Community market increased more than the value and that there was no significant change in the mix of the product types sold, indicates that Morton decreased its average sales prices during the period examined.

(26) The investigation has shown that prices charged by Morton in the Community market started to decrease in 1995 when the sales volume increased by 5 % but sales value only increased by 2 %. Then, from 1996 to the investigation period, the sales volume decreased by 2 %, whereas the sales value decreased by 5 %, again pointing to a continued price decrease.

2. *Share of the Community market*

(27) Market share in volume held by Morton was very high and stable during the whole period under analysis (over 75 % of the market). Morton kept its market share in terms of volume and after the sales prices decreased by 2 % in 1995, Morton managed to increase significantly its market share in terms of volume by 7 % in 1996.

3. *Average sales price of dumped imports*

(28) From 1994 to the investigation period, sales prices of PSP imported from the USA into the Community market decreased by 4 %. In Germany, which is the main market for PSP, it has been found that during the same period of time Morton's average prices decreased by around 5 %. In other Member States such as the United Kingdom, where Akcros does not at present trade, prices were higher and did not fluctuate during the same period of time.

(29) The fact that Morton sold around 80 % of its PSP in Germany and that during the investigation period Morton's average sales price in the United Kingdom was around 17 % higher than its average sales price in Germany, indicates that Morton targets the Member States where Akcros mainly does business.

4. *Price undercutting*

(30) As it was found that most of Akcros' sales, and all sales made by Morton, were made directly to industrial users in the Community, average sales prices of PSP charged by Morton were compared on a type-by-type basis to the relevant prices charged by Akcros to users in order to evaluate possible price undercutting.

(31) Since no difference in sales conditions or levels of trade which would have had an impact on price comparison was found to exist, it was not necessary to adjust the average prices.

(32) For the investigation period the comparison made on a type-by-type basis showed price undercutting margins expressed as a percentage of the relevant Community industry's sales price which ranged from 1 to 23 % depending on the type of PSP, or 1,8 % on total turnover.

4. Situation of the Community industry

1. *Volume and value of sales in the Community market*

(33) The investigation has shown that Akcros' sales volume decreased by 13 % and its sales value by 20 % in 1996 when compared with 1994. The decrease is even higher when compared with 1995.

(34) Since prices were decreasing in the Community market, customers took advantage of the situation prevailing in the Community market and requested additional price reductions from the Community industry. Even though Akcros refused to do this over a long period in 1996 they finally had to make price concessions. This explains why the volume of sales recovered (+ 22 %) and average sales prices decreased by 4 % during the investigation period as compared with 1996.

2. *Market share*

(35) During the period examined the trend in market share shows that the Community industry kept its market share in terms of volume but lost 6 % in terms of value.

3. *Average sales price and price evolution*

(36) The average sales price of PSP sold by the Community industry between 1994 and the investigation period decreased by 11 %. Price evolution per Member State indicated that the trend in prices in Germany was more negative than in other Community Member States and price evolution on a type-by-type basis had shown better trends in sales prices for the types of PSP not sold by Morton.

4. *Profitability*

(37) The average return on sales for the product concerned has remained negative since 1994. Although the Community producer has made considerable efforts to control and reduce costs, profitability has always been negative during the period examined.

5. *Production, capacity installed, capacity utilisation and stocks*

(38) Production of the Community industry over the period examined increased by 5 % and production capacity by 28 %.

In view of the positive forecasts in the PSP market until the year 2000, the Community industry increased its capacity of production. As a result of increased capacity and of a volume of production lower than expected, the capacity utilisation rate decreased by 18 % during the entire period examined.

As far as capacity utilization is concerned, the investigation has shown that a rate of around 80 % would be necessary to produce positive effects in costs and profitability.

(39) Between 1994 and the investigation period stocks increased by 56 %.

6. *Investments*

(40) Investments in the product concerned increased by 7 % during the period under examination. The Community industry has also invested in machinery with the aim of increasing its production capacity and improving its presence in the market.

7. *Employment*

(41) The number of personnel employed by the Community decreased by 7 % during the period examined.

5. Conclusion on injury

(42) The injury investigation has shown that during the period examined, despite the increase in consumption and the generally positive market expectations for the PSP market, the decrease in average sales prices of PSP led to a deterioration of the financial situation of the Community industry which was only attenuated through substantial cost reduction effected at the end of the period examined.

(43) The seriousness of this deterioration first appeared between 1995 and 1996 when Akcros' sales volume decreased by 18 %, production by 19 % and sales prices by 8 %.

(44) Although the Community industry's production and sales volume developed positively during the investigation period, the continuous pressure on sales prices which decreased yet again by 4 %, prevented any improvement in profitability and financial losses added to those already made in the past.

(45) In view of the developments of the injury indicators during the period under examination, in particular the negative evolution of sales prices and significant losses incurred by the Community industry, it is considered that this industry has suffered material injury within the meaning of Article 3 of the Basic Regulation.

F. CAUSATION

1. Introduction

(46) The Commission examined whether the injury suffered by the Community industry was caused by the volume and price level of dumped imports in question. The Commission also examined whether other known factors, such as the development of consumption in the Community market, the export activity and price policy of the Community industry and competition from substitute products, were not such as to break the causal link between the dumping practiced in the imports of PSP from the USA and the injury suffered by the Community industry.

2. Effect of dumped imports on the Community industry

(47) When assessing the effect of dumped imports on the Community industry, it should be recalled that Morton, whose production capacity is sufficiently large to meet the demand of PSP throughout the world, is by far the main supplier and therefore the market leader in the Community, the largest market world-wide. Its behaviour, as such, affects the whole market.

(48) This leadership therefore influences the level of prices in the Community. The injury investigation has shown that despite an increase in consumption of 5 % between 1994 and the end of the investigation period, prices in the Community market were decreasing. Akcros, the minor player in the market, had to follow this price decrease tendency which had a considerable negative impact on its financial situation during the period examined.

(49) The detailed analysis of prices for imports has shown for particular markets and particular product types that the imports concerned target the Community industry's sales in sensitive sectors. It was found that from 1994 to the investigation period, Morton's price decrease strategy aimed at targeting the German market where Morton's prices were found to be lower than in other Member States, and the type of PSP mostly sold by Akcros with the result that prices for these types were reduced by 15 % in the German market during the same period of time.

(50) The injury investigation has also shown that the market share held by Morton during the whole period under examination was particularly high, over 75 %. The presence of such large quantities of dumped imports on the Community market must have in itself had a significant impact on the overall market and, consequently, on the situation of the Community industry, the smaller producer.

3. Impact of other factors

1. *Development of consumption*

(51) When considering whether the development of consumption affected the situation of the Community industry, it should be recalled that during the period under examination, consumption increased by 5 % and that the market expectations for PSP, in particular in the Community market, are good up to the year 2000 and probably also beyond that date. Therefore the material injury suffered by the Community industry cannot be attributed to the development of Community consumption.

2. *Export activity of the Community industry*

(52) Exports have always represented a minor activity for Akcros as they accounted for around 13 % of total sales during the period examined. It follows that the slight decrease in the volume of export sales (– 3,5 % of total sales) during the period under examination, cannot explain the material injury suffered by Akcros, particularly in view of the fact that the average sales price charged by Akcros for exports was around 19 % higher than the average Community price.

3. *Competition from substitute products*

(53) Considering the main sales segment for PSP, namely the insulating glass segment, it was found that there are also other products, such as polyurethane or silicone, used as glass sealant in the Community. However these being rather expensive and less resistant to solvent than PSP in the longer term, their market share is estimated to be limited, at around 15 % of the Community market. The Commission, however, examined whether competition from these substitutes may have caused injury to the Community industry during the period examined.

(54) On the basis of the information available, it appeared that these substitute products did not gain market share during the period examined. On the contrary, the increase in consumption of PSP indicates that industrial users continued to mainly rely on PSP rather than on other substitutes to produce glass-insulating sealant. It can be concluded therefore that competition from substitute products had, if any, only a very limited impact on the Community industry.

4. *Self-inflicted injury*

(55) The Commission examined whether, on the basis of the volume of sales made by Akcros during the investigation period, the increase in the capacity of production had caused injury to the Community industry.

Recalling that the market forecasts were good for PSP in the European market, it was found that the amount of investment required for increasing the capacity of production was rather limited. Indeed, the cost of this investment included in the financial statements of Akcros during the investigation period was found to be below 1 % of the total turnover of the product concerned.

(56) According to Morton, the general price depression in the Community market, which has been the major cause of the injury suffered by the Community industry from 1994 up to the investigation period, has been the result of a policy initiated by the Community industry since entering the market in 1991.

(57) In this respect it should be recalled that the price-undercutting analysis revealed that for the Community industry's main sales market and for its important types of PSP Morton had undercut the Community industry's prices. Moreover, taking due consideration of the fact that Morton is the market leader, with a market share of over 75 %, the Commission concluded that it is not in the interest of Akcros to pursue such a policy in the long term. This is also demonstrated by the Community industry's efforts to maintain prices at a reasonable level as described in recital 34. In addition, depressed sales prices would never allow Akcros to recover the considerable investments made in the PSP business since 1991.

(58) Contrary to Akcros, Morton, being the major supplier and able to supply the entire market demand, may have a certain interest in following a policy of price decrease as this may strengthen and reinforce in the long run its position as market leader.

(59) On the basis of the above facts and considerations, the Commission did not find any objective interest in Akcros implementing a policy of price reduction.

4. **Conclusion on causation**

(60) The investigation has shown that PSP is a homogeneous product, mainly offered directly to end-users in the Community market. Therefore the presence of the high volume of dumped PSP imported from the USA which undercut the Community industry's prices had a significant impact on that market. Furthermore, the market being transparent, the effect of price decreases well known to all users in the Community market, had a major impact on the level of prices in the market as a whole.

(61) On the basis of the above and in the absence of other factors it is provisionally concluded that the dumped imports under examination caused the material injury suffered by the Community industry.

G. **COMMUNITY INTEREST**

1. **Preliminary remarks**

(62) The purpose of anti-dumping measures is to remedy an unfair trading practice which has an injurious effect on a Community industry. Such a remedy should result in the re-establishment of a situation of effective competition on the Community market.

(63) The Commission provisionally examined, on the basis of all the evidence submitted, whether, despite the conclusions on dumping, injury and the cause of this injury, any compelling reasons existed which would have led to the conclusion that it is not 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 on all parties involved in the proceeding and also the consequences of taking or not taking measures.

2. **Interest of the Community industry**

1. *Viability of the Community industry*

(64) The investigation has shown that Akcros Chemicals' global profitability, before extraordinary results, for the whole production facility where, among other products, PSP is produced, was positive at the end of the investigation period. The negative situation in the Community industry's PSP business was only caused by the presence of a high volume of dumped imports from the USA in the Community market. The global performance therefore indicates that this industry is in general term competitive and viable.

(65) The Community PSP market is the largest market in the world and forecasts for the near future indicate that it will increase even further. The investigation has shown that Akcros has become an important operator of PSP in the Community market. The ongoing rationalisation efforts and

investments which Akcros has made during the period examined, show that it is not ready to abandon the PSP market. With anti-dumping measures in force, Akcros could make a recovery and benefit from the positive volume effect foreseen in the PSP business in the Community up to the year 2000.

(66) The interest of the Community industry, the minor player in the Community PSP market, is therefore that fair competitive conditions be restored and that prices reflecting fair trading conditions be quoted in the Community market.

2. *Employment*

(67) As the PSP business represents a significant share of Akcros' activities, leaving this business segment without any protection against unfair trade practices, may also affect the activities of the whole company which are mainly concentrated in a region already suffering from a high rate of unemployment.

(68) It follows therefore that the examination of the consequences of not taking measures on employment should not be limited to the number of people directly employed in the production and sale of PSP but should also take into consideration the possible impact on all the personnel employed by Akcros, and the uncertainty it would create in the sector dependent on PSP which employs around 1 000 additional people in the Community.

3. **Interest of Community users**

(69) In order to evaluate the impact on users of taking measures or not taking measures, the Commission conducted a separate investigation on the basis of the responses to the questionnaires sent to the main industrial users in the Community. As mentioned above it has been provisionally established that three users covering over 65 % of the total consumption of PSP in the Community replied to the questionnaire in a meaningful manner. The following findings are based on their replies.

(70) It was found that PSP supplied by the two suppliers in the market represents on average 25 % of the full cost of production of finished PSP-based sealing compounds.

(71) Taking due consideration of the above findings and the market share held by Morton in the Community, it was established that a possible duty of 9 % on PSP would have an estimated impact of around 1,7 % on users' costs of production of PSP-based finished products.

The above impact on users' costs should be seen in the light of the positive effects anti-dumping measures could produce on the sales volume and sales price of Akcros as indicated in recital 38.

(72) Not taking measures may lead to the disappearance of the sole Community producer and to a monopoly situation in the Community market. On the basis of the experience gained since the end of the monopoly in 1991, this would probably, among other consequences, lead to a significant increase in prices.

(73) The investigation has shown that users benefited from the presence of a second operator in the market since 1991. Firstly because competition had a positive effect on the level of prices and secondly because the existence of two suppliers in the market also ensures the security of supply; users tend to be supplied by both companies rather than relying on only one supplier. Accordingly it is concluded that it was in the users interests that both Akcros and Morton are present in the market.

4. **Consequences for competition in the Community market**

(74) Special attention has been paid to the competition aspects covered by the present case because of the existence of a duopoly on the Community market.

(75) On the basis of the available information, the opinion of the Commission is that without the imposition of anti-dumping measures the Community producer risks being driven out of the market in the short term and consequently there will be no competition at all in the market. Industrial users would thus be deprived of the benefit of the competition they have enjoyed in the Community market since 1991. Among other consequences, prices will probably increase significantly if left in the hands of a single operator.

(76) The potential for price increases should also be seen in the light of competition from substitute products, such as polyurethane and silicone which are already available on the Community market, although it should be borne in mind that these

only cover a very limited share of the market, as indicated in recital 53, and therefore users will not necessarily be able to switch easily to these substitutes.

(77) In addition the investigation has also shown that prices charged for PSP in Member States where only one supplier is present are significantly higher than in Member States where both suppliers are present. It can therefore be expected that the price increases resulting from the absence of competition would be higher than those if anti-dumping measures were imposed.

(78) As a matter of fact, with the measures proposed below, price increases, if any, will be very limited as indicated in recital 71. In addition, from an economic point of view the level of these measures is not such as to foreclose the Community market to the American producing exporter and will therefore ensure the continued presence of their products in the market.

(79) As already mentioned, imports from the USA are necessary in order to cover the expanding demand of Community users as well as to ensure competition in the market. The proposed measures are not inconsistent with this aspect while at the same time restoring fair competition conditions in the market. Thus, the benefits of a market governed by two competitive forces would be available to the users of the product concerned and ensure fair price negotiations.

(80) On the basis of the above facts and considerations, it can be concluded that not taking measures would cause uncertainty for users and could lead to considerable price increases in the medium term, and that it is in the users' interest that the market be governed by two competitive and competing forces.

5. **Conclusion on Community interest**

In examining the various interests involved, the Commission concluded that there were no compelling reasons not to adopt anti-dumping measures.

H. **PROPOSED MEASURES**

(81) For the purposes 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**

(82) It was considered that the amount of duty necessary to remove the effects of injurious dumping should allow the Community industry to cover its costs of production and obtain a reasonable profit on sales. In this respect it was found that a profit margin before tax of 9 % on turnover could be considered to be an appropriate basis, due regard being given to the need for long-term investment and, more particularly, a rate of return which the Community industry could reasonably expect in the absence of injurious dumping.

(83) Accordingly, injury elimination levels were determined on a type-by-type basis and compared to the selling price of PSP originating in the USA at industrial user level. The injury margin, expressed as a percentage of the cif value of the imports in question, was 9,1 % on average.

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

(84) Since the injury margin was found to be lower than the dumping margin, the provisional duty to be imposed should correspond to the injury margin established, in conformity with Article 7(2) of the Basic Regulation.

Based on the provisional determination of dumping and the injury resulting therefrom, a provisional *ad valorem* duty of 9,1 % should be imposed on imports of polysulphide polymers originating in the USA.

I. **RIGHTS OF INTERESTED PARTIES**

(85) In the interests 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 polysulphide polymers falling within CN code ex 4002 99 90 (TARIC code 4002 99 90 * 10) originating in the United States of America.

2. For the product concerned referred to in paragraph 1 the rate of anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

— United States of America: 9,1 %.

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

4. 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 its entry into force.

Article 3

This Regulation shall enter into force on the day of 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, 18 March 1998.

For the Commission

Leon BRITTAN

Vice-President