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COUNCIL REGULATION (EC) No 1603/2000

of 20 July 2000

imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America

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COUNCIL REGULATION (EC) No 1603/2000

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imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America

THE COUNCIL OF THE EUROPEAN UNION,

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]), and in particular Articles 11(2) and 11(3) thereof,

Having regard to the proposal submitted by the Commission after having consulted the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) In February 1994, the Council imposed definitive anti-dumping duties on imports of ethanolamines originating in the United States (Regulation (EC) No 229/94 ([2])). The duties took the form of minimum-price-based variable duties for the three types of ethanolamines, i.e. monoethanolamine (MEA), diethanolamine (DEA) and triethanolamine (TEA).

2. **Request for a review**

(2) Following the publication on 23 July 1998 ([3]) of a notice of impending expiry of the anti-dumping measures in force with regard to imports of ethanolamines originating in the USA, the Commission received a request to review these measures pursuant to Article 11(2) and 11(3) of Regulation (EC) No 384/96 (the 'Basic Regulation'), i.e. a request for an expiry and interim review.

(3) The request was lodged on 30 October 1998 by the Conseil européen des fédérations de l'industrie chimique (CEFIC) on behalf of Community producers whose collective output constituted a major proportion of the total Community production of ethanolamines.

(4) The CEFIC argued that expiry of the measures would be likely to result in a continuation or recurrence of increased dumping and injury to the Community industry and that there were reasons to review the measures because they lacked effectiveness. Having determined, after consulting the Advisory Committee, that the evidence was sufficient, the Commission initiated an investigation ([4]) pursuant to Articles 11(2) and 11(3) of the Basic Regulation. The investigation therefore covered not only the question of what would happen if the measures were allowed to lapse (see Article 11(2)), but also whether a modification of the existing anti-dumping measures (minimum-price-based variable duties) was warranted (see Article 11(3)).

3. **Investigation**

(5) The Commission officially advised the Community producers supporting the request for review (the 'applicant Community producers'), the exporting producers and their related importers,

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.98, p.18).
([2]) OJ L 28, 2.2.1994, p. 40.
([3]) OJ C 231, 23.7.1998, p. 3.
([4]) OJ C 27, 2.2.1999, p. 3.

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as well as the users known to be concerned, and gave them the opportunity to make their views known in writing and/or to request a hearing.

(6) The Commission sent questionnaires to the parties known to be concerned and received replies from the four applicant Community producers, four US exporting producers and five of their related importers. Questionnaires were also sent to a large number of users of the product; two of their replies were considered complete.

(7) One US exporting producer declared its intention to cooperate in the investigation, although it had not exported to the Community during the investigation period (IP). The interest of this producer in the investigation stemmed from its involvement in the original investigation.

(8) The Commission sought and verified all information deemed necessary for the determination of the likely continuation and recurrence of dumping and injury and the analysis of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) *exporting producers*

Dow Chemical Company, Midland, Michigan (USA)

Huntsman Chemical Company, Houston, Texas (USA)

Union Carbide Corporation, Danbury, Connecticut (USA)

(b) *importers in the Community related to the exporting producers*

Huntsman Co. Belgium CVBA, Brussels, Belgium

Union Carbide Benelux, Antwerp, Belgium

Union Carbide Europe SA, Geneva, Switzerland

(c) *applicant Community producers*

BASF AG, Ludwigshafen, Germany

BP Chemicals Ltd, London, UK and Lavera, France

(d) *Community users*

Krems Chemie AG, Krems a.d. Donau, Austria

Synthesia Española SA, Barcelona, Spain

(9) The investigation of continuation and recurrence of dumping covered the period from 1 January to 31 December 1998 (the 'investigation period' or 'IP'). The examination of continuation and recurrence of injury covered the period from 1 January 1995 to the end of the IP (the 'IIP').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(10) The product concerned here is the same as that covered by the previous investigation. It is recalled that ethanolamines are obtained by making ethylene oxide react with ammonia. As a result of this synthesis, three competing reactions occur, resulting in three different types of ethanolamine: mono- (MEA), di- (DEA) and tri-ethanolamines (TEA). The proportions of the three types in the total output are determined by the production installation design, but can, to a certain extent, be controlled by the choice of the ammonia/ethylene oxide ratio. The product concerned is used as an intermediate for surfactants (used in detergents and personal care products), fertilisers, crop protection agents, corrosion inhibitors, lubrication oils, photographic chemicals, cosmetics and polyurethane, and as a gas scrubber absorption aid or additive for the cement, metal-works and paper industries. Because of the combined production

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process (see above), when DEA is produced, the other types of ethanolamine (MEA and TEA) are produced as well and in larger quantities.

2. **Like product**

(11) Production installations of the Community industry will typically produce 30-33 % DEA. Either MEA or TEA can account for as much as 54 % of total ethanolamines production. Given the combined production process, the claim of one exporting producer that the different types of ethanolamine should be treated separately with respect to the injury analysis cannot be justified.

(12) Since the imposition of the anti-dumping measures under review, the market has been characterised by strong growth in the demand for DEA, especially in the USA. This has been triggered by the use of DEA in the production of glyphosate herbicides, which are suited to crops genetically modified to be resistant to such herbicides.

(13) The product concerned imported from the country under investigation is identical in terms of physical and technical characteristics to the Community-produced product. There is no difference in use between the Community-produced products and the imported products. It has further been found that the product concerned imported from the country under investigation is identical to that sold on its domestic market. Therefore, all these products must be considered as one product.

C. **LIKELIHOOD OF CONTINUATION OF DUMPING**

1. **Preliminary remarks**

(14) Following the allegation made in the complaint that circumstances had changed since the original investigation, the level of dumping for the IP was examined.

(15) Of the four US exporting producers who replied to the questionnaire, two had significant exports to the Community during the IP, while another two declared no or only very few exports.

(16) For the exporting producer which had a small quantity of exports it was decided in the absence of any other information that a dumping margin could reasonably be based on this small volume of exports.

2. **Normal value**

(17) Normal value was established for each type of the product concerned, based on the price of all actual domestic sales in the USA (see Article 2(1) of the Basic Regulation: ‘prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country’). For product types which were not sold in representative quantities or not in the ordinary course of trade on the domestic market, the normal value was calculated in accordance with Article 2(3) of the Basic Regulation.

(18) With regard to the three US exporting producers, the domestic sales of the product under consideration were found, in accordance with Article 2(2) of the Basic Regulation, to represent more than 5 % of the sales volume of exports of the product from the USA to the Community. It was also established that for the same three exporting producers, sufficient domestic sales of the product had been made in the ordinary course of trade in accordance with Article 2(4) of the Basic Regulation to permit the prices of such sales to be used to determine normal value.

3. **Export price**

(19) In all cases, the imports of the product concerned were made by companies which are related to the US exporting producers. It

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was therefore considered that the prices of the sales from the producing companies to the importing companies were unreliable. For that reason, and in accordance with the provisions of Article 2(9) of the Basic Regulation, the export prices were constructed on the basis of the price at which the imported product was first resold to independent buyers in the Community. Allowance was made for all costs incurred between importation and resale, including commissions and a profit margin of 5 %, which was considered reasonable on the basis of information from interested parties on imports of the product concerned.

4. **Comparison**

(20) The normal value was compared with the export price on a transaction-by-transaction basis at ex-works level and at the same level of trade. For the purpose of ensuring a fair comparison between normal value and export price, differences in factors which were claimed and demonstrated to affect comparability (see Article 2(10) of the Basic Regulation) were taken into account. Thus, adjustments were made for inland and ocean freight, insurance, handling, loading and ancillary costs, credit costs and commissions.

(21) A comparison of normal values with export prices was made for all types covered by the present investigation. For the cooperating exporting producers, this comparison showed the existence of a weighted average dumping margin, expressed as a percentage of cif value, of 33 % for Dow Chemical, 38,2 % for Union Carbide and 40,1 % for Huntsman.

5. **Lasting nature of changed circumstances**

(22) The Commission examined whether the changes in dumping margins were likely to prove lasting. It was found that the lower dumping margins were largely due to increased export prices, which have applied for at least two years. For this reason, and as the export quantities involved were viewed as representative, the Commission concludes that the findings represent a lasting change in the circumstances of these imports from the USA. No evidence was submitted which contradicted these findings.

6. **Conclusion**

(23) The expiry review initiated under Article 11(2) of the Basic Regulation indicated that, if measures were removed, there would be a likelihood of continuation of dumping, mainly on the grounds that substantial dumping was found to exist during the IP and that it was reasonable to conclude that such dumping would continue.

(24) The Article 11(3) interim review, initiated on the basis of a request to revise measures in order to take into due account the current market conditions, concluded that the circumstances which led to the existing measures have changed significantly and that such changes are to be considered sufficiently lasting to warrant a downward revision of the dumping margins established during the original investigation.

D. **DEFINITION OF THE COMMUNITY INDUSTRY**

1. **Total Community production**

(25) The complaint was lodged on behalf of four out of the five EU ethanolamine manufacturers. One company, Union Carbide Ltd. (UK), did not participate in the investigation, nor did it support the complaint. It should be noted that this company is related to the US producer Union Carbide Corp. USA. An assessment was made, therefore, as to whether this company should be excluded from the definition of Community production in accordance with Article 4(1) of the Basic Regulation. It was found that the manu-

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facturer concerned itself imported the dumped product in significant quantities. As there could therefore be no guarantee that the economic situation of this manufacturer was not affected by its relationship to the US producer, it was considered that it should be excluded from the determination of Community production. Total Community production therefore is accounted for by the following companies: BASF AG, Ludwigshafen, Germany; BP Chemicals Ltd, London, United Kingdom; Condea Chemie GmbH, Marl, Germany and Akzo Nobel Surface Chemistry AB, Stenungsund, Sweden.

2. **Community industry**

(26) The Commission sent questionnaires to the applicant Community producers and received replies from three of them. One reply that failed to provide cost of production data for the period 1995 to 1997 was accepted on the grounds that the company took over the ethanolamines business on 1 July 1998 from another company and therefore did not have access to the data. The forth producer sent only an incomplete questionnaire reply and was consequently considered a non-cooperator. The three applicant Community producers which co-operated in the investigation constitute the Community industry within the meaning of Article 4(1) of the Basic Regulation, as they represent 77,5 % of the total Community production. They are referred to below as the 'Community industry'.

3. **Determination of the relevant Community market**

(27) Part of the Community industry's production (around 28 %) is for internal, i.e. captive, use. Of this amount, the great majority (around 95 %) is for use at one Community producer's plant, earmarked and used for that sole purpose. The investigation confirmed that the applicant Community producers do not purchase the product concerned from independent parties, either inside or outside the Community, for their captive use. Ethanolamines intended for captive use are therefore not considered to be in competition with ethanolamines otherwise available in the Community, the latter being the relevant Community market for the product concerned.

E. **ANALYSIS OF THE SITUATION ON THE COMMUNITY MARKET**

1. **Community consumption**

(28) Community consumption was based on the volume of sales of the Community industry, the sales volume of the non-cooperating Community producer, Eurostat-information on the import volume and an estimate of the sales of the Community-based manufacturer related to the US exporting producer Union Carbide ([1]) on this market.

(29) Consumption calculated on this basis increased by 14 % during the IIP: from around 152 000 tonnes in 1995 to around 172 000 tonnes in the IP. This increase is attributed to DEA and TEA sales, which rose by 19 % and 21 % respectively. The demand for MEA has remained stable. MEA and DEA each represent around 29 % of overall consumption in the IP and TEA around 42 %.

([1]) Based on the complaint and information from the US exporting producer. The sales correspond to 10 % of the total sales of all ethanolamines produced within the Community market.

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2. **Imports from the country concerned**

(a) Volume, price trend and market share

(30) Imports from the USA increased by 14 % over the IIP, in line with the trend of overall Community consumption. However, the figures contain an underlying downward trend in DEA-imports (–38 % over the IIP), which accounted for only 12,6 % of total imports in the IP. This should be seen in light of the high DEA demand on the US domestic market. On the other hand, notwithstanding the stable demand for MEA on the Community market during the IIP, imports from the USA increased by 86 % over the same period. Imports of TEA during this period grew by 11 %.

(31) Since imports are made by related importers, prices for imports from the USA, whether established on the basis of information submitted by the exporting producers or Eurostat figures, were not deemed reliable for the purpose of establishing price trends. In order to establish more reliably the pricing behaviour of the exporting producers concerned, their related importers' resale prices were analysed — more specifically prices to industrial end-users found to be representative for overall sales. These prices declined 10 % on average from 1995 to 1996 and were found to be substantially lower than the Community industry sales prices during both those years. This trend was most pronounced for MEA, with a 14 % decrease of the resale price. Towards the end of the IIP, the resale price of TEA was back at the 1995 level, whereas DEA became 13 % more expensive and MEA was still 4 % cheaper. In the IP, the price levels of the related importers and the Community industry were comparable.

(32) The overall market share for imports from the USA is stable over the IIP at 29 %. However, the figures contain an underlying increase in market share for MEA from 17 % to 32 % and a decrease of DEA market share from 25 % to 13 %. TEA decreased slightly from 42 % to 39 %.

(b) Price behaviour of exporting producers

(33) In order to assess the price behaviour of US exporting producers, their sales as well as those of the Community industry were analysed. In a first step, sales prices to first independent customers were compared on the Community market. Given that the Community industry sells only to industrial end-users, and that these customers also cover a significant share (over 50 %) of the sales of the US exporting producers, a comparison at this level of trade was considered representative. For the determination of dumping, this comparison was made on the basis of data for the two main US exporting producers.

(34) Since all imports into the Community originating in the USA were made via related importers, the above comparison used the prices charged to the first independent buyers in the Community at an ex-related-importer level, i.e. after deduction of freight costs in the Community, discounts and rebates. The comparison showed that during the IP, the overall average price levels for imports from the USA and Community industry sales were comparable.

(35) In a second step, an analysis was made of the import prices of ethanolamines originating in the USA, i. e. the prices between the exporting producers and their related importers, as compared to the minimum prices determining the variable duties. This showed that no significant amounts of anti-dumping duties had been collected, as these import prices were significantly above minimum prices for most of the IIP.

(36) In a third step, given the relation between exporting producers and the importers, it was established for the IP whether the resale prices received by these importers from their first independent customers and the respective actual import prices

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reflected the related importers' costs between importation and resale. All costs actually incurred between importation and resale, such as freight from the Community border, handling, insurance, packaging, credit expenses, import duties, SGA costs and a 5 % profit margin were therefore deducted from the resale prices. This resulted in import prices constructed independently of the relationship between the exporting producers and their related importers.

(37) These constructed import prices for both exporting producers were not only significantly lower than the actual import prices declared by their related importers, but were also significantly lower than the applicable minimum prices for the various types of ethanolamine. This finding is confirmed by the fact that the related importers incurred significant financial losses during the IP. Indeed, the margins they realised between purchase price (actual import price) and resale price on the Community market were not sufficient to cover the costs incurred between importation and resale. It should be noted that the pattern established for the IP has also been observed for the remainder of the period considered, i.e. 1995 to 1997.

(38) On the basis of the above three-step analysis, it is concluded that the resale prices of US exporting producers on the Community market were in line with those of the Community industry. Furthermore, it has been found that actual import price levels were situated above the minimum prices. However, these actual import prices have not, or at least not fully, reflected the anti-dumping measures in force if account is taken of the costs incurred between importation and resale. Therefore, it can be concluded that the US exporting producers and their related importers absorbed the anti-dumping measures, at least partially, by setting artificially high actual import prices which constitute transfer prices.

3. **Situation of the Community industry**

(a) Production, production capacity and capacity utilisation

(39) Production increased by 38 % during the IIP, particularly from 1996 to 1997, following an expansion of capacity from roughly 117 000 to 139 000 tons. The increase in production, combined with the more moderate increase in capacity, improved the overall Community industry's capacity utilisation from 81,8 % to 91,1 % over the IIP.

(40) As mentioned above, the capacity installed at one Community producer's plant in 1997 accounts for around 95 % of Community production for captive purposes and was designed to serve only that purpose. The above mentioned increase in production capacity, however, is a result of this investment in captive use production as this reduced the captive use at another plant of the same company. This in turn liberated capacity for free market sales.

(b) Sales volume

(41) The sales volume of the Community industry on the Community market increased by 27 % over the IIP to approximately 96 000 tons, driven by the increase of DEA and TEA sales (by 32 % and 28 % respectively) over this period.

(c) Market share

(42) The Community industry increased its market share overall from 50 % to 56 % during the period 1995 to 1997, gaining 11 % for MEA, 5 % for DEA and 3 % for TEA. Between 1997 and the IP market share overall and for TEA remained stable, increased further for DEA (from 61 % to 63 %), but fell for MEA (from 53 % to 49 %).

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(d) Stocks

(43) Stocks increased by 10 % over the IIP. This increase is lower than the production increase of 38 %.

(e) Development of sales price and manufacturing cost

(44) Overall sales price dropped 17 % from 1995 to 1996. This was followed by increases in 1997 and 1998 respectively of 3 % and 9 % over 1996 prices. In contrast to the minimum prices and the situation in 1995, DEA has become the most expensive product over the IIP.

(45) Resale prices of US imports in the Community were substantially below the Community industry's sales prices in 1995 and 1996. The downward pressure of 17 % on the Community industry's sales prices from 1995 to 1996 occurred at the same time MEA imports from the USA almost doubled and the resale price of US imports of MEA dropped by 14 % to ECU 605 per tonne, lowering the Community industry's sales price by 22 % to ECU 647 per tonne.

(46) Apart from market conditions, sales prices are essentially driven by the cost of raw materials. The overall manufacturing cost dropped by 7 % from 1995 to 1996 and, compared to 1996, increased slightly by between 1 % and 2 % for the year 1997 and the IP. Over the whole period, manufacturing costs fell by 6 % but prices declined by 10 %. DEA is the only exception here: the average price fell by only 1 % while manufacturing costs decreased by 4 %.

(47) It should also be underlined that the production of ethanolamines for the Community industry is important since it allows to use own-produced upstream ethylene oxide, providing economies of scale for this upstream production process, and to use the ethanolamines as an intermediate for other products (captive use). It was claimed that purchase prices for ethylene oxide were overstated causing a downward pressure on the ethanolamines business. It was found, however, that the companies involved organise their ethylene oxide and ethanolamines businesses as separate profit centres, making cross-subsidisation unlikely, and checks were carried out as to whether the transfer price at which this raw material was incorporated in the cost of production of ethanolamines reflected market value. In all cases it was found that the transfer prices used reflected the sales prices of ethylene oxide quoted to independent customers purchasing similar quantities.

(f) Profitability

(48) Profitability has been affected by sales prices and manufacturing costs. Profits fell from 3,94 % in 1995 to loss-making levels of –8,64 % in 1996 and –8,49 % in 1997. The price recovery in the IP was insufficient to generate a profit and profitability remained negative at –1,37 %.

(g) Investments

(49) Investment in ethanolamines for the free market remained fairly stable between 1995 and 1998 at around ECU 4 million a year, except for 1996, when the figure was twice that. In that year, major changes were made to one plant after the group's captive production was taken over by another plant belonging to the same Community producer.

(h) Employment

(50) The production of ethanolamines is not a labour intensive process. Overall, employment rose by 23 % and reached 166 persons in 1998.

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4. **Import volumes and prices from other third countries**

(51) On the basis of Eurostat information, Bulgarian export prices are lower than actual US import prices from the same source. As explained above, it should however be noted that Eurostat prices for imports originating in the US are not considered reliable. One Bulgarian producer, Burgas, has had a stable 3 % share of the Community market since 1996. Based on Eurostat information, approximately 70 % of its exports are MEA — a market share of 6 % in this segment during the IP (compared to 49 % for the Community industry and 32 % for US exporting producers).

(52) The market share of all other countries declined to 2 % across all types of ethanolamines and 6 % for MEA. However, these imports originate from a variety of sources, none of which holds a significant market share.

5. **Conclusion on the situation of the Community market**

(53) Production volume and capacity of the Community industry show a positive trend. Sales volumes increased, especially for DEA and TEA. Market share increased overall but dropped for MEA, when compared with 1997. Although better than in 1996 and 1997, profitability remained insufficient in 1998 because of continued pressure on sales prices. Indeed, the initial fall in sales prices from 1995 to 1996 has still not been compensated and there is still price pressure from the imports concerned.

(54) The continuation of the downward pressure on the Community industry's sales prices and the consequent negative profitability are directly linked to the pricing behaviour of the US exporting producers, in particular the absorption of the measures in force and the resulting price pressure.

F. **LIKELIHOOD OF CONTINUATION OF INJURIOUS DUMPING**

1. **Analysis of demand for ethanolamines**

(55) Because of the combined production process, the increased consumption of DEA and TEA in the Community leads to a significant supply of MEA. Upward price pressure has been most pronounced for DEA, accentuated by the gradual withdrawal by the US exporting producers from this market (illustrated by a corresponding drop in US market share from 25 % to 13 % over the IIP).

(56) At the same time, worldwide ethanolamine production capacity is further increasing in anticipation of continued growth in demand for DEA, with major producers both in the Community and in the USA investing at similar rates. High demand for DEA has led to corresponding upward price adjustments in this segment, while DEA consumption — and thus prices — during the previous investigation were low. The effect on sales prices (and consequently on profitability) of increasing capacity and increasing demand for DEA remains unclear, but the (world-wide) excess production of MEA, in particular, threatens to depress market conditions.

2. **Analysis of the situation of the US exporting producers**

(57) The world-wide capacity increase threatens to create excess production, especially of MEA, while the Community market, with a price level higher than other third countries, is attractive for US exporting producers. US production capacity increased by more than one third over the 1995 to 1998 period. From 1997 to the IP, capacity installed rose 19,9 % to 524 000 tons for the three US producers Union Carbide, Huntsman and Dow Chemical and, although production increased by 9 %, the capacity utilisation rate fell from 90,4 % to 83 %. New capacity

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installed is generally aimed at DEA, bringing excess production of MEA.

(58) Furthermore, the investigation showed that US producers exported significant quantities of the product concerned to the Community throughout the period examined, indicating that the Community market is an important outlet for their production. From 1997 to the IP corresponding US exports to the Community increased by 12,4 %, whereas domestic sales increased only 4,9 % and exports to other third countries decreased by 2,7 %. During the IP, US domestic sales represented 67,1 % of total sales by the three US producers mentioned above, exports to the Community 13,6 % and exports to third countries 19,3 %.

(59) The investigation also demonstrated that US domestic prices are at a higher level than sales prices in the Community market. The higher price level in the USA can be directly attributed to the high consumption of DEA on the US market.

(60) Finally, it should be noted that South Korea has imposed measures against imports of ethanolamines from the USA. While it is not considered that the quantities involved, even if they were entirely deflected, are such as to disrupt the Community market, the fact that anti-dumping measures have been imposed shows that US exporting producers are prepared to carry out exports at dumped prices.

(61) The prices of both the Community industry and the exporting producers over the IIP have constantly been above the minimum-price-based variable anti-dumping measures. It has been shown that actual import prices do not reflect the resale prices of the related importers concerned and that import prices reflecting costs incurred between importation and resale have systematically been below minimum prices, indicating that the US exporting producers have partially absorbed the anti-dumping measures imposed. At the same time, the Community industry has not been able to recover from the negative situation it has experienced and still faces an unsatisfactory situation in terms of profits during the IP.

(62) The investigation confirmed that, as in the previous investigation period (1991 to 1992) before imposition of measures, US producers exported significant quantities onto the Community market. From 48 000 tons in the previous IP, these dropped to 44 000 tons at the beginning of the IIP, before rising to 51 000 tons at the end. They represent 40 % of total Community production during the IP.

(63) It was found that in line with growing demand for DEA in the USA which put upward pressure on US sales prices for DEA and ethanolamines in general, a somewhat less pronounced price change was observed on the Community market. This trend in consumption has at the same time meant that MEA is produced in increasing quantities, with the risk that due to a lack of commensurate demand it will be sold at lower and lower prices. The effect on the price of TEA is expected to be less, as smaller production surpluses are predicted.

(64) One US exporting producer contended that the Community industry itself has an overcapacity of MEA that creates a downward pressure on prices. It was, however, unable to substantiate this claim. It should also be noted that one US producer alleged that the Community industry undercut its prices for DEA in 1998. The investigation showed, however, that the Community company quoted did not sell any DEA to the client mentioned.

3. **Conclusion on likelihood of continuation of injurious dumping**

(65) The investigation showed that, despite the anti-dumping measures in force and increased production, production capacity, consumption and sales volumes, the Community industry is still in a fragile state, in particular as far as its sales prices and profit-

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ability are concerned. The Community industry was allowed to fill the gap left by the partial retreat by US exporting producers from the DEA Community market. However, due to the partial absorption by US exporting producers of the measures in force, their excess production of MEA and the resulting growth in EU imports of MEA from the USA at dumped prices, prices for all ethanolamines remained too low to restore the profitability of the Community industry, even with anti-dumping measures.

(66) The investigation established that the imports concerned are still taking place at significantly dumped prices. It has been found that domestic US prices have increased since the previous investigation, although to a lesser extent than the prices of US exports to the Community. This has led to smaller dumping margins than those in the initial investigation, not least because of the absorption. It was further found that export quantities are significant, being equivalent to 40 % of total Community production during the IP.

(67) The Community industry has been unable to recover from the negative situation affecting it since the previous investigation; prices of imports from the USA have been below minimum prices, (given actual costs between importation and resale), thereby partially absorbing the anti-dumping measures in force and preventing the Community industry from improving its situation; capacity increases in the USA are likely to depress market conditions in the Community, in particular due to excess MEA; and the Community market, as compared to other markets, remains attractive to the US exporting producers, who continue to export significant quantities to the Community at dumped prices — it is therefore concluded that there is a likelihood of continuation of injurious dumping.

G. **COMMUNITY INTEREST**

1. **Introduction**

(68) In the previous investigation, the adoption of measures was considered not to be against the interest of the Community. The present investigation is a review, analysing a situation in which anti-dumping measures were already in place and its remit is thus to assess any undue negative impact of the measures on the parties concerned. It was therefore examined whether, despite the conclusions on the likelihood of continuation of injurious dumping, there were compelling reasons to conclude that it was not in the Community interest to maintain measures. For this purpose, and pursuant to Article 21(1) of the Basic Regulation, account was taken of the impact on all parties involved in the proceedings of maintaining the existing measures, imposing alternative measures or dropping the measures.

2. **Interest of the Community industry**

(69) The existing measures have not led to a price level on the Community market that would allow the Community producers to regain profitability. The investigation showed that the measures have never become fully effective — while actual import prices have been above the minimum prices set, the latter have not been reflected in related importers' resale prices. The outlook for the situation in the Community market is not favourable given the distinct possibility of an inflow of MEA, produced in recently installed production sites, and continuing pressure on prices, which in 1999 in some instances even went below set minimum prices.

(70) In view of the above, continuing measures to limit the downward pressure on ethanolamine prices would be in the interest of the Community industry.

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3. **Interest of users**

(71) The Commission received four questionnaire replies from ethanolamines users, two of which were considered complete and were followed up by an on-site investigation. As those four users represent only 1,4 % of Community consumption during the IP, the information submitted could not be considered representative. The users argued that any increase in their cost of production should be avoided, since this affects their profitability.

(72) Information collected in the course of the investigation indicated an incidence of the purchase price of ethanolamines in the cost of production of the finished product during the IP ranging from 2,21 % to 18,82 % (the latter figure relating to an extreme case, for a product for which ethanolamine can be perfectly substituted by another unrelated chemical). The overall weighted average stands at 4,33 % of the cost of production. The maximum impact of the measures proposed is on average less than one percent and can therefore be considered limited.

(73) One additional user of the product concerned claimed that it planned to produce a chemical product, glyphosate intermediate, in the Community using DEA. This company claimed it was unable to do so because of the artificially high import prices (due to anti-dumping measures) and the absence of local (Community) supply of DEA. It should be noted here that the minimum price on which the variable duty is based was always lower than the purchase prices established for the various interested parties during the IP. This showed that this user's first claim did not reflect reality. The investigation further showed that DEA was not sufficiently available in the USA and that exports to the Community decreased as a result. It took some time for the Community producers to adapt to the increase in demand, but DEA supply has never been so short that prices were affected significantly and the company's second claim must be considered as ill-founded.

4. **Conclusion on Community interest**

(74) Maintaining measures would be in the interest of the Community industry in ensuring that prices, especially for MEA, are raised to a non-injurious level. The users of the product which came forward did not represent an important share of Community consumption and/or could not substantiate their claims. In any event, the incidence of measures on their cost of production is limited. On the basis of these considerations, it was concluded that there were no compelling reasons not to continue measures, in order to ensure competitive conditions of fair pricing and avoid the continuation of injury to the Community industry.

H. **ANTI-DUMPING MEASURES**

(75) Since it was determined that US exporting producers absorbed the measures over an extended period and the import volume remained significant, it was concluded that the underlying trends were lasting. In these circumstances, it had to be decided on which basis the investigation carried out pursuant to both Article 11(2) and 11 (3) of the Basic Regulation had to be concluded. As the measures presently in force had not led to the anticipated positive effect for the Community industry, it was decided that:

— the anti-dumping measures should be renewed,

— their form should be revised,

— their level should be adapted to the level of dumping and injury found.

(76) It should be noted here that actual import prices are used in anti-dumping proceedings to determine both dumping and injury margins. The investigation demonstrated that the actual import prices do not reflect the related importers' resale prices. Using such data would underestimate the actual dumping and injury

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margins for the IP. Therefore, it was concluded that the dumping and injury margins determined pursuant to Article 11(3) of the Basic Regulation needed to be based on the constructed import price.

(77) In order to calculate the injury threshold, a non-injurious sales price for the Community industry was determined, allowing for an 8 % profit margin, and compared with the US related importers' resale prices. Any difference was expressed as a percentage of the constructed CIF import value. On the basis of this methodology the underselling margins, which were lower than the corresponding dumping margins, were 10,4 % for Union Carbide Corporation, 13,9 % for Dow Chemical Company and 20,5 % for Huntsman Chemical Company. In the previous investigation, by comparison, the minimum-price-based variable duties were based on overall underselling margins of 45,2 % for Union Carbide, 53,5 % for Dow Chemical and 39,5 % for Huntsman.

(78) Specific fixed duties based on the difference between the non-injurious price and the US related importers' resale prices, amount to EUR 59,25 per tonne for Union Carbide Corporation, EUR 69,40 per tonne for Dow Chemical Company and EUR 111,25 per tonne for Huntsman Chemical Company. This type of measure is considered appropriate, as imports from the USA take place mainly through related sales companies. The residual specific fixed duty is set at EUR 111,25 per tonne.

(79) All parties concerned were informed of the essential facts and considerations on which the continuation of measures at an updated level and in an updated form is based. They were granted a period within which to make representations subsequent to disclosures.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ethanolamines currently classifiable within CN codes ex 2922 11 00 (monoethanolamine) (TARIC code 2922 11 00 10), ex 2922 12 00 (diethanolamine) (TARIC code 2922 12 00 10) and 2922 13 10 (triethanolamine), originating in the United States of America.

2. The rate of the definitive duty applicable to the net free-at-Community-frontier price, before duty, for the following companies' products shall be as follows:

Country	Company	Specific fixed duty
United States of America	Union Carbide Corporation Old Ridgebury Road Danbury Connecticut 06817 (TARIC additional code: A115)	EUR 59,25 per ton
	Huntsman Chemical Corporation 3040 Post Oak Boulevard PO Box 27707 Houston Texas 77056 (TARIC additional code: A116)	EUR 111,25 per ton
	Dow Chemical Company 2040 Dow Center Midland Michigan 48674 (TARIC additional code: A145)	EUR 69,40 per ton
	All other companies (TARIC additional code: A999)	EUR 111,25 per ton

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

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4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93, the amount of the anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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Article 2

This Regulation shall enter into force on the day following that 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.