COUNCIL REGULATION (EC) No 2011/2000

of 18 September 2000

imposing a definitive anti-dumping duty on imports of fluorspar originating in the People's Republic of China

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 9, 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In March 1994, definitive anti-dumping measures were imposed by Council Regulation (EC) No 486/94 ([2]) in the form of a variable duty associated with a minimum price of 113,50 ECU per tonne on imports of fluorspar originating in the People's Republic of China ('the PRC'). The original investigation period covered the period from 1 January 1991 to 30 March 1992.

2. Initiation of the review

(2) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of fluorspar originating in the PRC ([3]), in December 1998, the Commission received a request to review these measures pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (the 'basic Regulation').

(3) The request was lodged by Eurometaux, ('the applicant') acting on behalf of Community producers representing more than 95 % of the total Community production of fluorspar.

(4) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry. Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review pursuant to Article 11(2) of the basic Regulation, the Commission initiated a review ([4]).

(5) At the same time, the Commission decided to initiate a review, on its own initiative, pursuant to Article 11(3) of the basic Regulation, limited in scope to the form of the duty. This decision was based on the grounds that the effectiveness of the measures to remove the injury appeared to be undermined given the continuous decline of the market share held by the Community industry following the imposition of measures, and that export prices of Chinese fluorspar appeared to have remained below the level of the minimum price.

3. Investigation

(6) The Commission officially advised the applicant Community producers, the exporters and producers in the exporting country, the importers as well as their representative associations known to be concerned, and the representatives of the exporting country of the initiation of the review. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set out in the notice of initiation. In addition, a producer in South Africa, which was chosen as analogue country, was advised and received a questionnaire. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(7) All the applicant Community producers replied to the questionnaire. Nine Chinese exporters/traders, all of them members of the China Chamber of Commerce of Metal, Mineral, and Chemical Importers and Exporters ('CCCMC'), replied to the exporters/traders questionnaire. In addition, Cometals, New York, United States of America, an independent trader of Chinese fluorspar, and CMC Trading AG, Zug, Switzerland, completed the exporters/traders questionnaire.

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

([1]) OJ L 56, 6.3.1996, p.1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).
([2]) OJ L 62, 5.3.1994, p. 1.
([3]) OJ C 276, 4.9.1998, p. 2.
([4]) OJ C 62, 4.3.1999, p. 3, as amended by OJ C 120, 1.5.1999, p. 23.

(a) applicant Community producers

— Minersa, Bilbao, Spain;

— Nuova Mineraria Silius, Cagliari, Italy;

— Sachtleben Bergbau, Lennestadt, Germany;

— Sogerem, Albi, France.

(b) users in the Community:

— Ausimont SpA, Milan, Italy;

— Bayer, Leverkusen, Germany;

— Fluorsid, Assemini, Italy;

— ICI Chemicals, Runcorn, United Kingdom

(9) The investigation of continuation or recurrence of dumping covered the period from 1 March 1998 to 28 February 1999, in particular the months of March and September 1998 and February 1999, ('IP'). The examination of continuation or recurrence of injury covered the period from 1 January 1993 up to 28 February 1999 (hereinafter referred to as 'the period examined').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(10) The product under consideration is fluorspar of both acid and ceramic grade presented in filter cake or in powder form, with a content of 97 % or less of calcium fluoride (CaF_2) falling under CN code ex 2529 21 00 (TARIC code 2529 21 00 10), as well as with a content of more than 97 % of calcium fluoride (CaF_2) falling under CN code ex 2529 22 00 (TARIC code 2529 22 00 10) ('fluorspar'). In order to produce fluorspar, ore has to be mined, crushed and floated. The result is fluorspar with various calcium fluoride contents. Fluorspar in filter cake form and in powder form differs only in its moisture content, but is perfectly interchangeable in its use. Fluorspar is used essentially as a feedstock in the manufacture of hydrofluoric acid. This product is largely employed in the production of fluorocarbons, the basic acid products for aerosols, refrigerants and plastic foam; the production of aluminium fluoride used in the aluminium sector and the production of fluorine chemicals such as solvents. Since all types of fluorspar have identical or similar physical and chemical characteristics and identical uses, as in the investigation leading to the measures presently reviewed, they are considered as one single product.

2. Like product

(11) As established in the previous investigation and confirmed in this investigation, fluorspar exported to the Community from the PRC, fluorspar manufactured and sold by the Community industry on the Community market and fluorspar produced and sold on the domestic market of the analogue country, are identical or bear a close resemblance in their basic physical and chemical characteristics and in their uses.

This conclusion was reached taking into account the fact that fluorspar is mined and processed in similar ways, despite differences in methods of extraction, in CaF_2 content of the deposit and in production method which may vary from producer to producer world-wide and also within the Community. This is confirmed by the fact that both the Community producers and the Chinese exporters have a number of common customers.

(12) In view of the above, the fluorspar exported to the Community, that sold on the domestic market in South Africa and that produced and sold on the Community market are to be considered a like product within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

(13) Despite the imposition of anti-dumping measures, the volume of imports of fluorspar from the PRC grew significantly during the period of enforcement of the measures going from 62 935 tonnes in 1995 to 155 200 tonnes in the year 1998, which covers the main part of the IP as defined in recital 9. It has been examined whether dumping continued or was likely to continue during the IP.

1. Normal value

(a) *Analogue country*

(14) Normal value for imports from the PRC was based, in accordance with Article 2(7) of the basic Regulation, on data from a market economy third country. South Africa was selected in the original investigation as an appropriate market economy third country. It was, therefore, envisaged in the notice of initiation of this review to retain this country for the determination of normal value. One cooperating exporter/trader and several Community users of fluorspar submitted that South Africa was inappropriate on the grounds that the access to raw materials in South Africa is more difficult than in the PRC. In particular, it was submitted that mines of fluorspar in South Africa do not enjoy the same natural advantages as those in the PRC, and that as a result the extracting and processing costs are higher in South African mines than in Chinese mines; however, these parties did not argue that the circumstances prevailing during the previous investigation had changed. These parties suggested Mexico and Kenya as alternative analogue countries in which, it was claimed, the natural conditions were comparable to those prevailing in the PRC.

(15) In this respect, the Commission sought cooperation in countries where fluorspar was known to be produced in sufficient quantities. In particular, a request for cooperation was addressed to one producer in South Africa, one in Morocco, four in Mexico, and one in Kenya. Only the South African producer cooperated fully. None of the other companies approached responded to the questionnaire within the time limit set for the response. The Kenyan producer submitted an incomplete response beyond the time-limit.

(16) Given that cooperation of a representative South African producer was obtained, and as other countries were considered less appropriate as analogue countries, this country was retained as analogue country.

(17) It should be noted in this respect that the South African cooperating producer had representative domestic sales (see recital 20), whereas the above mentioned Kenyan producer did not have any domestic sales.

(18) The extraction method, quality and production process of the South African producer can be considered as similar to that of the Chinese producers, as established in the investigation that led to the measures under review. The alleged difference in access to raw materials between South Africa and the PRC has been duly treated as in the original investigation when comparing export price and normal value (see recital 26). All parties were duly informed on the final selection of South Africa as analogue country.

(b) *Normal value determination*

(19) Normal value was established on the basis of the information provided by the cooperating South African producer. The name of the company is not disclosed herewith as its cooperation could only be secured provided a strict guarantee of confidential treatment of its identity would be granted by the Commission.

(20) In accordance with Article 2 of the basic Regulation, it was first examined whether domestic sales of the product concerned were representative in relation to the Chinese exports to the Community. The domestic sales of the South African cooperating producer were found to represent slightly less than 5 % of the total Community imports from the PRC during the IP, while being generally above 5 % during the period of enforcement of measures. In these circumstances, the Commission considered that the domestic sales in South Africa were representative for Chinese exports to the Community. It was further established that domestic sales were made in the ordinary course of trade, i.e. domestic prices provided for the recovery of all cost. Therefore, the selling price in the domestic market was used as basis for the calculation of normal value.

2. **Export price**

(21) In accordance with Article 17 of the basic Regulation, given that the number of Chinese exporters/traders, members of CCCMC, willing to cooperate was large, the investigation was limited to a sample of the export transactions made by nine of the above-mentioned exporters/traders. Their export transactions collectively accounted for a representative volume of exports, i.e. 70 % of the total imports into the Community of the product concerned from the PRC in 1998, the period for which data was available at the time of the selection of the sample.

(22) As the Chinese exporters/traders sold for export to unrelated importers in the Community, the export price was established, in accordance with Article 2(8) of the basic Regulation, on the basis of the export prices actually paid or payable for export to the Community.

(23) The cif Community border prices used were based on the prices declared by the cooperating US exporter/trader Cometals and the calculated prices resulting from the data submitted by the cooperating Chinese exporters/traders. Given that the cooperating Chinese exporters/traders sold to the Community on a fob ex-PRC basis, their cif values were determined by adding to those prices a reasonable amount for ocean freight and insurance as established on the basis of information submitted by cooperating Community users.

3. **Comparison**

(24) For the purpose of ensuring a fair comparison between normal value and export price, account was taken of differences in factors, which were demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(25) Adjustments for differences in physical characteristics, transport, insurance, handling charge and credit were made.

(26) Two adjustments, in respect of physical characteristics, deserve special consideration:

— Chinese exports of fluorspar to the Community market are made in wet form, whereas domestic sales made by the cooperating South African producer on the South African market are made in dry form. As in the previous investigation, an adjustment to the normal value was made and has been based on a reasonable estimate of the difference in market value between fluorspar presented in dry and wet form, i.e. cost of drying plus a reasonable amount for SG&A and profit.

— The investigation that led to the imposition of the measures under review established that the PRC enjoys natural advantages over South Africa by reason of the easier access to raw material which, in turn, has an impact on the purity of the product, and that in this respect certain costs are incurred in South Africa but not in the PRC. Accordingly, in order to offset this difference affecting price comparability, an adjustment to normal value was granted within the framework of the original investigation. Given that the natural advantage in question continued to exist, it was decided for the purpose of the present review to apply the same adjustment to the normal value as in the original investigation.

(27) The cooperating Chinese exporters/traders claimed an adjustment for differences in levels of trade on the basis that the South African cooperating producer sells to users and the Chinese exporters/traders sell to importer/traders. After further analysis of the matter, it was concluded that there was a difference in levels of trade that merited an adjustment. Since the cooperating South African producer does not sell to the two different levels of trade under consideration, the adjustment was estimated, pursuant to Article 2(10)(d)(ii), as 10 % of its gross margin in accordance with the established practice of the Community Institutions.

4. **Dumping margin**

(28) The comparison of the weighted average export price with the weighted average normal value showed still the existence of dumping during the IP, the dumping margin being equal to the amount by which the normal value exceeded the export price (expressed as a percentage of the cif import prices at the Community border, duty unpaid). However, the dumping margin found was lower than that established in the original investigation. It should also be noted that the reduced level of dumping is in essence due to the rise in export prices which reflect the Chinese export licence system and the form of the anti-dumping duty (i.e. the variable duty).

5. **Conclusion on likelihood of continuation of dumping**

(29) Since dumping was found to exist during the IP, there is no reason to believe that dumping will not continue should the anti-dumping measures currently applicable be repealed.

D. **LIKELIHOOD OF RECURRENCE OF DUMPING**

1. **Preliminary remarks**

(30) Further to the establishment of the continuation of dumping during the IP, the likelihood of recurrence of dumping, should the measures in question be removed, was examined. For that purpose, the following factors were examined: the evolution of Chinese export prices from 1993 to the IP, the impact of the export licence system introduced by the Chinese authorities in 1994 and the situation in the PRC as regards fluorspar production, production capacity and stocks.

2. **Evolution of Chinese export prices to the Community**

(31) Parallel to the imposition of anti-dumping measures, export prices of Chinese fluorspar have progressively increased and have, on average and on a cif at Community frontier basis, come close to the minimum price of ECU 113,5 per dry metric tonne. In particular prices went from ECU 86 in 1993 to ECU 111 per dry metric tonne in 1998. This appears to indicate that the minimum price acted as an incentive for a price increase. Therefore, it is likely that the removal of the measures would reverse the situation and bring about a decrease of export prices.

3. **The impact of the Chinese export licence system**

(32) The Chinese government introduced in 1994 a regulatory system consisting of an annual export quota combined with an export licence fee that covered a number of minerals including fluorspar. It should be noted that the introduction of the export license system coincided with the imposition of anti-dumping duties on fluorspar, and the existence of anti-dumping duties on other minerals covered. The declared object was to stabilise the exported volumes of fluorspar and other minerals, as well as preventing export prices from falling under the pressure of internal competition. It actually had an impact in increasing the Chinese export prices to the Community. The quota was lifted in 1998, and reintroduced in 1999, while the export licence fee has remained in force since its introduction. Export licences are auctioned and awarded to the highest bidders or to the bidders that are above the average price.

(33) The export licence system has been substantially modified several times since its introduction, including a temporary suppression of the quota system in 1998. Therefore, should prevailing conditions in international markets vary, or the scheme be perceived as not fulfilling its objectives, the Chinese administration might decide to amend the system or to remove it altogether without prior notice. This in turn might lead to decreasing export prices, in particular if the anti-dumping measures currently in force were repealed.

(34) In any event, in view of the fact that the system described above is run autonomously by the authorities of the exporting country, it should not have any influence on the decision of the Community institutions whether or not to renew anti-dumping measures in the framework of an investigation carried out pursuant to Article 11(2) and 11(3) of the basic Regulation.

4. **Chinese production, production capacity and stocks**

(35) No cooperation was obtained from any Chinese producer of fluorspar. The Chinese authorities and the CCCMC were informed that, in the absence of full cooperation, the responses provided by various Chinese parties concerned by the review would be considered to be deficient. No information was submitted within the time limit specified. The Commission had consequently, in accordance with Article 18 of the basic Regulation, to base its findings in respect of production, production capacity and stocks of Chinese fluorspar on the basis of the facts available. The information used stems from market research in the sector, information provided by a leading world trader of the product concerned as well as from public information available from other anti-dumping authorities.

(36) In this respect an increase in Chinese production capacity of fluorspar and a build up of stocks have been found during the investigation which poses the risk of an increase of Chinese exports that could trigger a world-wide price depression. Indeed, Chinese production capacity of acid grade fluorspar has increased by 26 % between 1993 and 1998. The capacity increase has also led to a reduced utilisation of capacity that was estimated to be 59 % in 1998 for acid grade fluorspar. Large amounts of Chinese stocks were found to have been built up. This creates a situation that is particularly volatile given that Chinese production of acid-grade fluorspar represents around 52 % of world production and Chinese exports correspond to 38 % of world output.

5. **Conclusion on recurrence of dumping**

(37) Taking into account that:

— exports of fluorspar to the Community originating in the PRC were found to be made at dumped prices during the IP,

— the evolution of Chinese cif export prices largely depends on the existence of the anti-dumping measures under review and on an export licence system introduced and run autonomously by the PRC government,

— given the possible temporary nature of the export licence system, this system cannot be considered as a guarantee that current export prices will be maintained,

— Chinese producers of fluorspar have dramatically increased their production capacity, have built up enormous stocks and currently have a very low utilisation of capacity,

it is concluded that there is a likelihood that dumping will continue at largely increased quantities, should the measures in force be removed.

E. **COMMUNITY INDUSTRY**

(38) The investigation has shown that the cooperating Community producers represent more than 95 % of the total Community production of the product concerned during the IP. Therefore, these producers constitute the Community industry within the meaning of Article 4(1) and 5(4) of the basic Regulation. Hereinafter they will be referred to as the Community industry.

F. **ANALYSIS OF THE SITUATION IN THE COMMUNITY FLUORSPAR MARKET**

1. **Consumption in the Community Market**

(39) Apparent consumption was based on the combined volume of sales to unrelated parties into the Community market by the Community industry, the information on the volume of total imports from the PRC reported in the exporters/traders' questionnaires, imports from other third countries as reported by Eurostat as well as data from the national statistical offices of Austria, Finland and Sweden for the import data prior to 1995.

(40) Sales of Community producers to related parties which transform fluorspar internally have been considered to take place in a captive market and were therefore excluded from the assessment of the Community consumption and, more generally, the situation of the Community industry. This conclusion was reached in view of the fact that the fluorspar intended for the captive market was not in competition with the fluorspar available in the Community and that the sales of that product to related parties were made at transfer prices.

(41) The applicant claimed that some imports originating in Namibia and South Africa should be excluded from the calculation of consumption since these imports were made to users in the Community related to the exporters concerned and thus were made on a captive market.

(42) It was found that both countries exported the product concerned to both related and unrelated companies. Furthermore, the related parties in the Community purchased the product concerned also from unrelated sources. Given that no clear separation could be established between these two types of sales, it was therefore concluded that all imports should be included in the calculation of the Community consumption.

(43) On this basis, the consumption in the Community market evolved from around 284 300 tonnes in 1993, to 392 700 tonnes in 1994, to 400 900 tonnes in 1995, to 470 700 tonnes in 1996, to 491 800 tonnes in 1997 and to 496 200 tonnes in 1998. Consumption of fluorspar in the Community has increased by 75 % over the period considered, especially between 1993 and 1994 (+ 38 %) and between 1995 and 1996 (+ 17 %). This increase in consumption is linked to the developments of the demand for aluminium and the increasing demand for fluorocarbons (refrigerants) as well as their specific fluorspar requirements. This increase is also attributable to the development of new downstream applications for fluorspar.

2. **Imports from the country concerned**

(a) *Import volume, share of the imports and market share of the imports concerned*

(44) The volume of imports of fluorspar originating in the PRC increased significantly from around 60 400 tonnes in 1993, to 62 900 tonnes in 1994, to 68 500 tonnes in 1995, to 109 300 tonnes in 1996, to 128 800 tonnes in 1997 and to 155 200 tonnes in 1998. Chinese imports of fluorspar into the Community have continuously increased during the period considered by about 157 %, growing at a higher pace than the Community consumption.

(45) The share of imports from the PRC of the total imports of fluorspar into the Community has fluctuated between 26,7 % and 50,6 %. The highest import share was reached in the IP.

(46) The share of the Community market held by the imports from the PRC developed from 21,3 % in 1993, to 16 % in 1994, to 17,1 in 1995, to 23,2 % in 1996, to 26,2 % in 1997 and to 31,3 % in 1998. This is equivalent to an overall increase of 10 points over the period examined. The decrease in market share in 1994 and 1995 can be explained by both the introduction of the anti-dumping measures in March 1994 and the Chinese export licence system introduced in April 1994.

(b) *Price evolution and price behaviour of the imports concerned*

(i) Price evolution

(47) According to the exporters/traders' questionnaire replies it was found that the prices of Chinese fluorspar, have increased by 29 % between 1993 and the IP to reach a level on a cif Community frontier basis slightly below the minimum price of 113,5 euro/tonne. In particular, between 1993 and 1997, prices of Chinese fluorspar have continuously increased from 86,06 ECU/tonne to 114,58 ECU/tonne. The decrease in Chinese prices between 1997 and 1998 coincided with the elimination of the Chinese export quota which triggered a general decrease in Chinese export prices to all export markets.

(ii) Price behaviour

(48) In order to examine the price behaviour of Chinese imports during the IP, a price comparison was made on the basis of the average sales prices of the Community industry and the average sales price of the cooperating Chinese exporters/traders and non-EC traders to unrelated importers in the Community adjusted to the same level of trade.

(49) Chinese prices during this time period were lower by a margin of around 12 % than those of the Community industry. It should be noted that the undercutting margin in the previous investigation amounted to 41 %.

3. **Economic situation of the Community industry**

(a) *Production*

(50) The production of the Community industry increased by 32 % over the period examined going from around 276 000 tonnes in 1993 to around 363 800 tonnes in 1998. A peak of around 372 300 tonnes was reached in 1995.

(b) *Production capacity*

(51) The production capacity of the Community industry was calculated on the basis of the flotation capacity, which represents the bottleneck of the fluorspar production. It went from 518 000 tonnes in 1993 to 502 000 in 1998, representing a decrease of 3 % during the period examined.

(c) *Capacity utilisation*

(52) The capacity utilisation of the Community industry increased from 53 % in 1993 to 60 % in 1994, to 72 % in 1995, to 68 % in 1996 and 1997, and to 72 % in 1998. The low levels of 1993 and 1994 can be explained by the effects of the dumped imports as established in the previous investigation. It is only after 1994 that the anti-dumping measures started to have an effect allowing the Community industry to operate at higher capacity utilisation levels.

(d) *Sales volume*

(53) The sales of the Community industry in the Community increased from around 120 000 tonnes in 1993 to around 189 000 tonnes in 1998. The increase in sales was in particular noticeable in 1995, when the Community industry increased its sales to 191 600 tonnes by decreasing its prices. This was done in order to maintain its share of the Community market.

(e) *Market share*

(54) The Community industry's share of the Community market decreased from 42,1 % in 1993 to 38,1 % in 1998, with a peak in 1995. The market share of 47,8 % attained in 1995 corresponds to a general decrease in imports into the Community that year which was the result of low prices charged by the Community industry to the detriment of its profitability. After 1995, the market share decreased regularly, dropping by 4 percentage points compared to 1993.

(f) *Price development*

(55) The average price for sales of fluorspar of the Community industry in the Community market decreased between 1993 and 1995 and increased globally between 1995 and 1998 with a peak in 1997. The low price level in 1995 corresponds to the strategy of the Community industry outlined above of trying to maintain market share by decreasing its price level. Between 1995 and 1997, the price level of the Community industry increased, coinciding with the steady increase of both Chinese prices and demand of fluorspar. Between 1997 and 1998, prices of the Community industry slightly decreased, coinciding with a decrease in the Chinese import prices.

(g) *Profitability*

(56) The profitability of the Community industry, expressed in percentage of the net sales went from −11,8 % in 1993 to 0,9 % in 1998.

(h) *Employment*

(57) Employment of the Community industry went from 696 employees in 1993 to 689 employees in 1998.

(i) *Stocks*

(58) The stocks of the Community producers decreased steadily from around 50 000 tonnes in 1993 to 28 400 tonnes in 1998 which is equivalent to a decrease of 43 %. Stocks represented 18 % of production in 1993 and 8 % in 1998.

(j) *In vestments*

(59) The total investments of the Community industry related to fluorspar increased from around 2,2 Mio ECU in 1993 to 9,4 Mio ECU in 1998.

(k) *Conclusion*

(60) After the imposition of the anti-dumping measures in 1994, the situation of the Community industry improved overall. Continued efforts to rationalise the production process and new investments were made. However, although the situation has improved globally, the period in which the measures were in force has not allowed the Community industry to fully recover from the past effects of the dumped imports, especially as far as profitability is concerned. Indeed, the profitability of the Community industry remained negative between 1993 and 1997. As from 1997 the profitability of the Community industry improved, coinciding with an overall improvement in its sales prices in the Community and in its productivity. However, the Community industry is only just above break-even and its financial results remain clearly below what this type of industry could achieve under normal market conditions.

(61) It is therefore concluded that although the situation of the Community industry has improved subsequent to the imposition of anti-dumping measures, it has not fully recovered and continues to be in a precarious situation.

4. **Impact of the imports concerned**

(62) The investigation has shown that, despite the imposition of the anti-dumping measures in March 1994, Chinese exports to the Community market have continued to increase. Indeed, imports of fluorspar from the PRC increased by 157 % between 1993 and 1998 and their share of the Community market increased from 21,3 % to 31,3 %. Over the same period, sales of the Community industry increased by 58 % but they lost market share to the benefit of Chinese imports. Their share of the Community market decreased from 42,1 % to 38,1 %.

(63) As regards prices, prices of the Chinese imports increased by 29 % over the period considered. This development in prices has to be seen in the light of the introduction of the anti-dumping measures in March 1994 and the Chinese export licence system introduced in 1994 which has contributed to the increase of the Chinese prices world-wide. The increase in prices is more significant as from 1996, coinciding with an improvement in the sales prices and a reduction of the losses of the Community industry.

(64) In July 1998, the Ministry for Foreign Trade and Economic Cooperation (MOFTEC) eliminated the export quota maintaining only the licence fee. Coinciding with this, Chinese prices decreased, notably in the second half of 1998 and in 1999, showing the potential for a decrease in the prices of Chinese fluorspar in the absence of anti-dumping measures.

5. **Import volumes and import prices of other third countries**

(65) The volume of fluorspar imports from other third countries increased by 46 % over the period examined from some 104 100 tonnes in 1993 to 151 700 tonnes in 1998. However, the market share of the above-mentioned countries decreased globally between 1993 and 1998 from 36,6 % to 30,6 %.

(66) As regards the prices of these other exporting countries, it is noted that they increased by 20 % between 1993 and 1998. However, they remained on average lower than the Chinese prices with the exception of Morocco. In the case of Namibia and South Africa, the fact that average export prices are lower than the Chinese prices should be seen in the light of the fact that part of the exports to the Community are made to related Community users, likely at transfer prices. As regards Kenya and Mexico, their fluorspar prices appear to reflect a higher percentage of impurities, which command lower prices as they entail additional costs for the users.

(67) On the basis of the above, it is considered that imports of fluorspar from other third countries have had a limited impact on the economic situation of the Community industry. Furthermore, it indicates that the Chinese exporters were able to significantly improve their position in the Community to the detriment not only of the Community industry, but also of other third countries.

G. **LIKELIHOOD OF CONTINUATION OF INJURY**

(68) In order to assess the likely effect of the expiry of the measures in force, the following factors were examined: the situation of the fluorspar industry in the PRC, the behaviour of Chinese imports of fluorspar in other third countries and the likely consequences of the removal of the anti-dumping measures on the situation of the Community industry.

1. **Analysis of the situation of the fluorspar industry in the PRC**

(a) *Production, production capacity, stocks*

(69) The applicant argued that production and production capacity of fluorspar in the PRC have substantially increased in the period considered, reaching levels well above annual world consumption. It was further argued that if measures are removed, there is a threat of a further increase of dumped Chinese imports.

(70) The Chinese exporters/traders claimed that it was very unlikely that exports of fluorspar to the Community would increase if measures were repealed given the increase in domestic consumption and the controls imposed by the Chinese authorities to production and production capacity.

(71) A number of Community users claimed that the current level of production and production capacity in the PRC during the IP did not constitute a threat to the Community industry given that internal consumption was growing, third countries which did not traditionally purchase from the PRC, such as India, were starting to import Chinese fluorspar and it was expected that Chinese exports will focus on the United States of America (hereinafter referred to as the US) market, given the expected increased demand in that market.

(72) According to the information available and as mentioned in recital 36, it should be noted that Chinese production and Chinese production capacity have steadily increased over the period examined. Indeed, the Chinese production capacity has increased from 1,9 million tonnes in 1993 to 2,4 million tonnes in 1998. The production has increased from 0,8 million tonnes to 1,4 million tonnes over the same years. At the same time, utilisation of capacity has been low, estimated at 59 % in 1998. Chinese domestic consumption is estimated to be at around 300 000 tonnes per year. Furthermore, during that same period, large amount of Chinese stocks have been built up.

(73) With such a huge production capacity and the possible dropping of the Chinese licence system, there is a likelihood that large quantities, above the current imports volume, of dumped Chinese fluorspar, could revert to the Community market in the absence of anti-dumping measures.

(b) *The Chinese export licence system*

(74) As already mentioned in recital 32, in April 1994, the Chinese authorities introduced an export licence system consisting of an annual export quota combined with an export licence fee on Chinese exports of fluorspar.

(75) The system has undergone some changes over recent years: the export quota was lifted mid 1998, thus from the second half of 1998 only the export licence fee remained in force. At the beginning of 1999, the Chinese authorities reintroduced the quota. In 1998, the licence fee was about ECU 20,3 per tonne on average. This implies that if exports are made at a level of ECU 113,5, the actual export price without licence fee would be ECU 93,2.

(76) The applicant claimed that the Chinese licence system could be abolished soon, raising fears that Chinese exports of fluorspar to the Community would increase at lower prices, should the anti-dumping measures be allowed to expire.

(77) The Chinese exporters/traders argued that the licence system was intended to protect the resources of fluorspar and ensure stability and reliability in the fluorspar market and that there was no reason to assume that the system would be abolished soon. They further stated that, should the anti-dumping measures not be continued, the licence system would not be lifted.

(78) It was considered that any presumption on the future development of the licence system is rather speculative. However, an analysis of the Chinese licence system shows that it has been substantially modified several times since its introduction, including a suppression of the export quota in 1998. Furthermore, the considerable amount of the Chinese licence fee shows the potential of Chinese fluorspar producers to sell at very low prices. In addition, the existence of an export licence system conceived and administered by a third country government for the purpose of the preservation of the resources cannot be relied on to conclude whether or not injurious dumping would continue.

(c) *Evolution of Chinese export prices to the Community*

(79) The anti-dumping measures appear to have led to a progressive increase in the export prices practised by the Chinese exporters. Therefore, the removal of measures could reverse the situation and bring along a decrease of export prices as shown by the experience during 1998 and the considerable amount of the Chinese export licence fee.

(80) Furthermore, a number of instances were found in 1998 where users purchased Chinese fluorspar below the minimum price and had therefore to pay anti-dumping duties.

2. **Likely consequences of the removal of the anti-dumping measures on the situation of the Community industry**

(81) In the first place, it is noted that after the IP, one of the applicant Community producers ceased its fluorspar production when it lost its biggest customer to Chinese competition. The fact that this took place at a time when anti-dumping measures were in force, shows the potential of further injury to the Community industry should anti-dumping measures be eliminated.

(82) Secondly, the investigation has shown that even with the anti-dumping measures in force, the prices of the Community industry were under pressure from the imports concerned. It is expected that in the absence of measures, prices, which the investigation has shown have been positively affected by the anti-dumping measures, would start to decrease and price undercutting would continue at higher levels. The potential for the decrease in Chinese prices is reflected in the amounts paid for the export licence fee, which amounted to ECU 20,3 on average in 1998. When deducting this amount from the export price, the undercutting margin could be estimated at 26,7 %. It is expected that such a price undercutting would result in severe losses to the Community industry.

(83) Thirdly, it is expected that in the absence of anti-dumping measures large volumes of low priced dumped imports of fluorspar will be present on the Community market. Community producers will then likely lose further sales volume and market share to the Chinese exporters.

3. **Conclusion on the likelihood of continuation of injury**

(84) Taking into account that:

— Chinese producers of fluorspar had dramatically increased their production capacity, had built up large stocks and had a very low capacity utilisation level,

— the evolution of Chinese cif export prices has been considerably influenced by the anti-dumping measures in force and the existence of an export licence system imposed by the PRC government. This system cannot be considered as a guarantee that export prices will be maintained, in the absence of anti-dumping measures,

— the prices that the Chinese exporters would charge in the absence of anti-dumping measures are potentially very low in particular if account is taken of the amount of the export licence fee paid, which indicates a strong likelihood of continuation of undercutting,

— the situation of the Community industry is still precarious,

— the fact that a number of instances have been found where the users in the Community have purchased Chinese fluorspar below the minimum import price,

it is concluded that the injury caused by Chinese dumped imports is likely to continue should the measures in force be removed and the situation of the Community industry could even further deteriorate in such an event.

H. **COMMUNITY INTEREST**

(85) According to Article 21 of the basic Regulation, it was examined whether it could be clearly concluded that maintaining the anti-dumping measures would not be in the Community interest. The determination of the Community interest was based on an appreciation of all the various interests involved taken as a whole, i.e. those of the Community industry, the importers as well as the users of the product concerned.

(86) It should be recalled that, in the previous investigation, the adoption of anti-dumping measures consisting of a minimum price was considered not to be against the interest of the Community. It should be noted that the present investigation is a review, which requires an analysis of a situation in which anti-dumping measures are already in place. Consequently, the timing and nature of the present investigation allows an assessment of any negative undue impact by the anti-dumping measures under review.

(87) In order to assess the likely impact of a continuation or non continuation of the measures, the Commission requested information in the form of questionnaires from all interested parties mentioned above. No importers replied to the questionnaire. Nine users replied to the questionnaires.

1. **Interest of the Community industry**

(88) The investigation has shown that the Community industry has benefited from the anti-dumping measures in place. In recent years, it has made considerable efforts to improve its productivity through rationalisation. Indeed, the productivity of the Community industry has increased by 33 % during the period examined and investments have been made constantly throughout that same period. The level of investments has been especially high in 1998, showing that this industry is viable and determined to remain in operation.

(89) However, the situation of the Community industry still remains difficult, notably in terms of profitability. In this context, any change in the commercial environment of the product concerned may have a significant adverse effect on the situation of the Community fluorspar industry.

(90) In view of the above, it was considered that without the continuation of the measures, the situation of the Community industry is likely to deteriorate. The continuation of the measures would, therefore, be in the interest of the Community industry.

2. **Interest of the importers**

(91) None of the unrelated importers replied to the questionnaires. The lack of cooperation could be an indication that the anti-dumping measures imposed in March 1994 have not had a significant adverse effect on importers. This can be supported by the fact that imports from the PRC have continuously increased during the period examined and thus importers have been able to continue sourcing from the PRC.

(92) In view of the above, it is therefore concluded that a continuation of the measures would not lead to a deterioration of their economic situation in the future.

3. **Interest of the user industry**

(a) *Preliminary remarks*

(93) Fluorspar is a basic raw material for a large number of downstream products with very high value added. The first transformation step of fluorspar is the production of hydrofluoric acid (hereinafter referred to as 'HF') which is in turn used for the production of fluorocarbons (input for refrigerants, solvents, foamings), aluminium fluoride (for aluminium production) and other chemical derivatives.

(b) *Data gathered from cooperating parties*

(94) In 1998, the cooperating users purchased the totality of the imports of fluorspar from the PRC and around 80 % of the sales of fluorspar made by the Community industry.

(95) In 1998, these cooperating companies represented a turnover of 26 465 Mio ECU out of which 682 Mio ECU (2,6 %) related to fluorspar derivative applications. The fluorspar user industry is composed of small, medium size and large companies which made significant investments in 1998. The weighted average profitability of the fluorspar derivatives sector has increased from 3,7 % in 1996 to 6,3 % in 1998.

(96) The investigation has shown that fluorspar represents around 30 % of the total costs of production of HF and between 5 % to 20 % for HF derivatives.

(c) *Arguments raised by the users*

(i) Dependence on imports

(97) Some users claimed that the maintenance of the measures is not in the interest of the Community given that the users are dependent on imports in view of the limited production capacity available in the Community. In this respect they argued that the continuation of the anti-dumping measures could create a shortage of supply in the Community whereas the demand for fluorspar is rising due to a combination of technological and regulatory developments.

(98) The Community industry did not dispute that imports from third countries are necessary to meet the Community demand for fluorspar. It claimed that the aim of anti-dumping measures is not to keep imports out of the Community but to ensure that these imports are made at fair prices.

(99) The investigation has shown that the anti-dumping measures in force have not prevented the Chinese imports from entering the Community market. Indeed, between 1994 and 1998 imports from the PRC increased by 146 %, following an increase in demand for fluorspar. At the same time, the Community industry also increased its sales by 58 %.

(100) In view of the above, the maintenance of the measures is not likely to prevent users from sourcing from the PRC, whereas the maintenance of a safety net will assist the Community industry in fully recovering from the injury suffered. From the above it is also unlikely that shortages of supply could occur should anti-dumping measures be maintained.

(ii) Competition disadvantages

(101) Some users claimed that the anti-dumping measures imposed on Chinese fluorspar will lead to artificially high fluorspar prices in the Community and will result in the fluorspar users being placed at a competitive disadvantage as regards their Community competitors not sourcing from the PRC and also as regards their competitors internationally. This would result in a relocation of HF production to the US and the PRC where access to fluorspar would be cheaper with consequent loss of jobs, investments and profits in the Community in high value added industries which are vital for the future competitiveness of the Community fluorspar user industry.

(102) The Community industry has argued that during the period of application of the measures, the downstream industry has made significant investments in the Community, contradicting the argument of relocation.

(103) It was found that between 1996 and 1998, significant investments were made by the fluorspar user industry in the Community. Furthermore, prices of fluorspar in the US have been found to be higher than in the Community. Indeed during 1998, prices of Chinese imports into the US were 7 % higher than those of the Chinese imports in the Community market. Profits of the users have increased on average from 3,7 % in 1996 to 6,3 % in 1998 notwithstanding the anti-dumping measures in force.

(104) As regards, more specifically, the relocation of the HF production in the PRC, it should be noted that HF is a highly dangerous product that is not suitable for travelling over long distances. This means in practice that the relocation of the HF production in the PRC would entail the relocation of the entire downstream industry in the PRC. Information provided by cooperating users relating to the period when anti-dumping measures were applicable seems to contradict the above. Indeed, users have made significant investments in the Community in downstream production during the period of application of anti-dumping measures. In view of the above, the relocation of the entire downstream industry in the PRC, should anti-dumping measures be allowed to continue, does not appear likely.

(105) In view of the above, the maintenance of anti-dumping measures in their current form is not expected to cause any competitive disadvantages for the user industry.

(iii) Alternative sources of supply

(106) A number of large fluorspar derivatives producers have to rely on imports of fluorspar. It was claimed by the users that there are significant impurities in non-Chinese fluorspar, i.e. in Kenyan and Mexican fluorspar, which explains why the main reliable source of supply is the PRC. Therefore, the continuation of the anti-dumping measures on imports from the PRC would hamper the access of users to good quality fluorspar.

(107) Firstly, it should be noted that, despite the differences in purity, imports from other countries have increased during the period of application of anti-dumping measures, following an increase in demand. For example, imports from Mexico have been multiplied by six while imports from Kenya have increased by 57 %. The above appears to indicate that such fluorspar is suitable for certain downstream applications.

(108) Secondly, the substantial increase of imports from the PRC indicates that the measures imposed in 1993 have not had the effect of excluding Chinese imports from the Community market but have resulted in an increase in prices.

(109) It is therefore concluded that the continuation of the current anti-dumping measures is not likely to result in a reduced access to fluorspar of all qualities for users.

4. **Conclusion on Community interest**

(110) Having analysed the various interests involved it has been found that the continuation of the anti-dumping measures is likely to result in a relatively stable price for fluorspar in the Community market, which during the period of application of the measures in force appeared not to have any negative effects on the economic situation of the users. Furthermore, leaving the Community industry without protection against the dumped imports could aggravate its precarious situation and endanger its viability.

(111) In view of the above, it is concluded that there are no compelling reasons on grounds of Community interest against the maintenance of the anti-dumping measures in the present case.

I. **INTERIM REVIEW**

(112) The Chinese exporters/traders argued that the initiation of the interim review, limited in scope to the form of the measures, was illegal since no evidence had been presented which would suggest the need to change the form of the measure. In this respect they argued that the request for a review according to Article 11(2) of the basic Regulation did not contain any information on the ineffectiveness of the anti-dumping measures in place.

(113) It should be mentioned that the interim review limited to the form of the measures was initiated ex officio by the Commission. The initiation was based on the grounds that information contained in the request for a review according to Article 11(2) of the basic Regulation presented by the applicant contained indications of the undermining of the effectiveness of the measures concerned.

(114) The investigation has shown that, although the Community industry lost market share during the period examined, the anti-dumping measure in its current form has allowed the Community industry to increase its prices and therefore to reduce its losses, in particular during the time period between 1996 and 1998. However, the duration of the measure has not allowed the Community industry to fully recover, namely in terms of profitability. Therefore, as far as the effectiveness of the measure is concerned, its current form appears to be appropriate to fully restore the situation of the Community industry and should consequently not be modified.

(115) Finally, as far as users are concerned, the investigation has shown that the anti-dumping measures in their current form have not significantly affected the economic situation of users.

(116) It is therefore concluded that the anti-dumping measures should be maintained in their current form.

J. **ANTI-DUMPING MEASURES**

(117) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were granted a period within which to make representations subsequent to disclosure. Representations made after final disclosure were duly taken into consideration.

(118) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping duty calculated on the basis of the minimum price of ECU 113,50 per dry metric tonne on imports of fluorspar originating in the People's Republic of China imposed by Regulation (EC) No 486/94 should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of fluorspar presented in filter cake or powder form, falling within CN code ex 2529 21 00 (TARIC code 2529 21 00 10) or CN code ex 2529 22 00 (TARIC code 2529 22 00 10), originating in the People' s Republic of China.

2. The duty shall be equal to the difference between a minimum price of EUR 113,50 per tonne (dry net weight) and the net, free-at-Community-frontier price, before customs clearance.

3. 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 [1], the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Community frontier price, before customs clearance.

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

Article 2

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

[1] OJ L 253 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1662/1999 (OJ L 197, 20.7.1999, p. 25).

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

Done at Brussels, 18 September 2000.

For the Council
The President
H. VÉDRINE