COMMISSION REGULATION (EC) No 617/2000

of 16 March 2000

imposing provisional anti-dumping duties on imports of solutions of urea and ammonium nitrate originating in Algeria, Belarus, Lithuania, Russia and Ukraine and accepting, on a provisional basis, an undertaking offered by an exporting producer in Algeria

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 26 June 1999, the Commission announced, by a notice published in the *Official Journal of the European Communities* [2] (hereinafter referred to as the 'notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Community of solutions of urea and ammonium nitrate (UAN), originating in Algeria, Belarus, Lithuania, Russia, the Slovak Republic, and Ukraine.

(2) The proceeding was initiated following a complaint lodged by the European Fertiliser Manufacturers Association (EFMA) on behalf of a major proportion of Community producers. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the complainant Community producers, exporting producers and importers, suppliers and users known to be concerned as well as associations concerned and representatives of the exporting countries, and the EU-Lithuania and EU-Slovak Republic Association Councils of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) In order to allow exporting producers in Russia to submit a claim for market economy status or individual treatment, if they so wished, the Commission sent market economy status/individual treatment claim forms to the Russian exporting producers known to be concerned.

Claims for market economy status were received from two exporting producers.

(5) The Commission sent questionnaires to all parties known to be concerned. Replies were received from 10 complainant Community producers, seven exporting producers, and 13 importers in the Community.

(6) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping and injury and carried out verifications at the premises of the following companies:

a) *Complainant Community producers*

1. Agrolinz Melamin GmbH, ADM, Linz, Austria,
2. DSM Agro BV, Sittard, Netherlands,
3. Fertiberia SA, Madrid, Spain,
4. Grande Paroisse SA, Paris, France,
5. Hydro Agri Chafers, Immingham, United Kingdom,
6. Hydro Agri France, Nanterre, France,
7. Hydro Agri Rostock, Rostock, Germany,
8. Hydro Agri Sluiskil BV, Sluiskil, Netherlands,
9. Kemira Agro Rozenburg BV, Rotterdam, Netherlands,
10. SKW Stickstoffwerke Piesteritz, Wittenberg, Germany.

b) *Exporting producers from the countries concerned*

1. JSC Achema, Jonava, Lithuania,
2. Duslo AS, Sala, Slovak Republic,
3. JSC Nevinnomyssky Azot, Nevinnomyssk, Russia,
4. JSC Novolon, Moscow, Russia.

c) *Importers*

1. Agrobaltic, Rostock, Germany,
2. Champagne Fertilisants SA Reims, France,
3. Common Market Fertilisers (CMF), Brussels, Belgium,
4. Evertrade, Paris, France,
5. Francefert SA Le Chesnay, France,
6. Helm Dungemittel GmbH, Hamburg, Germany,
7. Helm Engrais France, Puteaux, France,
8. UNCAA, Paris, France,
9. Wittraco, Hamburg, Germany.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ C 181, 26.6.1999, p. 27.

(7) The investigation of dumping covered the period from 1 June 1998 to 31 May 1999 (hereinafter referred to as 'the investigation period' or 'IP'). The examination of injury covered the period from 1995 to the end of the investigation period.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(8) The product concerned is a solution of urea and ammonium nitrate, a liquid fertiliser commonly used in agriculture. It consists of a mixture of urea and ammonium nitrate and water. The water content is approximately 70 % of the mixture (depending on the nitrogen content), the remaining part consisting equally of urea and ammonium nitrate. The nitrogen (N) content is the most significant 'feature' of the product, and it can vary between 28 % and 32 %. Such variation can be obtained by adding more or less water to the solution. Most of the imported UAN was 32 % N, which is more concentrated, and therefore cheaper to ship. However, whatever their nitrogen content, all solutions of urea and ammonium nitrate are considered to have the same basic physical and chemical characteristics and therefore constitute a single product for the purpose of this investigation. The product concerned falls within CN code 3102 80 00.

2. Like product

(9) UAN is a pure commodity product, and its quality and basic physical and chemical characteristics are identical whatever the country of origin. The product produced and sold in the Community has thus been found to be a like product, within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation') to that imported from the countries concerned, in that it has the same basic physical and chemical characteristics and essentially the same uses.

C. DUMPING

1. Algeria

a) *Normal value*

(10) The sole Algerian exporting producer, Fertalge Industries, replied to the questionnaire. Although the company had acted to the best of its ability, the information provided was far from ideal. More specifically, many of the figures the exporting producer provided for the cost of production could not be thoroughly verified, not least because a proper accounting system was only introduced in 1999, half way through the IP. However, in view of Algeria's special situation as a developing country, and in accordance with Article 15 of the Agreement on implementation of Article VI of GATT 1994, and taking into account the specific circumstances affecting this company, the Commission none the less decided to use data from the company where it was considered to be sufficiently reliable, and in so far as it did not materially affect the outcome.

(11) In the absence of domestic sales, normal value was constructed, in accordance with Article 2(3) of the basic Regulation, on the basis of the cost of manufacturing, plus a reasonable amount for selling, general and administrative (SG & A) costs, and for profit.

(12) For the purposes of calculating the cost of manufacturing, the raw material costs reported by the company were used. These costs account for a high proportion of the total cost of production of UAN. Other manufacturing costs, and the SG & A costs, were not considered suffiently reliable (see recital 10) and so the Commission had recourse to the figures given in the complaint, which were considered reasonable. The only alternative, to use the figures reported by the Slovak producer, would not have been appropriate given the fundamental differences in the production system and in company structure between the two producers. Finally, a reasonable margin for profit of 5 % was added, this being considered the profit the producer could reasonably have expected to achieve had sufficient sales of the product concerned been made on its domestic market.

b) *Export price*

(13) The export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community, in accordance with Article 2(8) of the basic Regulation.

c) *Comparison*

(14) A comparison between the constructed normal value and the export price at an exworks level was made. For that purpose, adjustments were made to the export price for differences in transport, insurance, handling, loading and ancillary costs as provided for in Article 2(10) of the basic Regulation.

d) *Dumping margin*

(15) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the exporting producer concerned was established on the basis of a comparison of the constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price (based on Eurostat figures), the provisional dumping margin for the sole Algerian exporting producer is 13,3 %.

Since the sole known exporting producer accounted for all Algerian exports of the product concerned to the Community, the Commission considers that the residual dumping margin should be set at the same level.

2. **Lithuania**

a) *Normal value*

(16) Since domestic sales of the product concerned during the IP represented less than 5 % of export sales, normal value had to be constructed. In accordance with Article 2(3) of the basic Regulation, constructed normal value was calculated by adding to the exporter's cost of manufacturing an amount for SG & A costs and for profit. In the absence of representative domestic sales of the product concerned, the amount for SG & A costs was established on the basis of the producer's total domestic SG & A costs for the same general category of products (fertilisers), in accordance with Article 2(6)(b) of the basic Regulation. Finally, a margin for profit of 5 % was added, this being considered the profit the producer could reasonably have expected to achieve had sufficient sales of the product been made on its domestic market.

b) *Export price*

(17) For those sales made to independent customers in the Community, the export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community, in accordance with Article 2(8) of the basic Regulation. For sales made via a related importer, the export price was constructed on the basis of resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer and for the profit margin found in the investigation to have been attained by independent importers of the product concerned, in accordance with Article 2(9) of the basic Regulation.

c) *Comparison*

(18) The normal value and the export price were compared on an ex-works basis. For that purpose, adjustments were made for differences in transport, insurance, loading and ancillary costs, as provided for in Article 2(10) of the basic Regulation.

d) *Dumping margin*

(19) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the exporting producer concerned was established on the basis of a comparison of constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price, the provisional dumping margin for the sole Lithuanian exporting producer is 7,6 %.

Since the sole known exporting producer accounted for all Lithuanian exports of the product concerned to the Community, the Commission considers that the residual dumping margin should he set at the same level.

3. **Slovak Republic**

(20) In view of the injury findings, according to which it has been provisionally concluded that imports originating in the Slovak Republic have not had a material impact on the injury caused to the Community industry (see recital 60), no dumping calculations were made.

4. **Russia, Belarus and Ukraine**

a) *Analogue country*

(21) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for Belarus and Ukraine has to be established on the basis of the price or constructed value in a market economy third country or 'analogue country'. The same applies to the Russian exporting producers, since none of them qualified for market economy status as defined in Article 2(7)(c) of the basic Regulation (see recital 24). In the notice of initiation, the United States of America was proposed as an appropriate third country. All parties were granted 10 days to comment on the proposed choice. Comments were submitted by three Russian companies jointly, by a fourth Russian company and by the sole Belarussian exporting producer. All of them criticised the proposed choice of the USA and proposed Lithuania as a more suitable analogue country.

The relevant arguments put forward were:

— the higher costs of raw materials (especially natural gas) in the USA and big differences in costs among US producers, depending on their geographical location, which could lead to inconsistent results,

— the similarity of equipment and production process (integrated production) between Lithuania, on the one hand, and Russia, Belarus and Ukraine on the other, unlike the situation in the USA,

— Lithuania was subject to the same investigation.

The Commission none the less approached known producers of the product in the USA but none of them was willing to cooperate in the investigation.

The Commission informed all interested parties of the refusal of companies in the USA to cooperate and asked them to comment on Lithuania as possible analogue country. EFMA raised objections to this proposal, mainly based on the allegedly very cheap gas prices paid by the Lithuanian exporter and the distortions allegedly carried over from its former non-market economy status. It then claimed that one US producer would cooperate. The Commission again approached this US producer but it confirmed that it was not willing to cooperate in the investigation.

EFMA then proposed the Slovak Republic.

(22) The Commission then examined Lithuania and the Slovak Republic as possible market economy third countries, and took into consideration the following factors.

Production

In Lithuania, and in the Slovak Republic, there is only one producer. Both of these are integrated producers, although the Slovak facilities appear to be less modern.

Lithuania is closer to Russia and, having been part of the former USSR, its production process and company organisation are closer to those in Russia, Belarus and Ukraine than to the Slovak Republic.

Domestic market conditions

The sole Lithuanian producer did not have representative domestic sales, which would mean normal value having to be constructed. The Slovak producer did have domestic sales, but dominated the local UAN market, holding 85 % of it.

In addition, many Slovak customers have cash-flow problems and a number of transactions involve barter (affecting between 10 % and 20 % of the turnover of the product concerned). It should be noted that the use of barter is one of the grounds for rejecting market economy status for two Russian exporters (see recital 24). In contrast, no use of barter could be detected in Lithuania.

Energy

Both producers purchase gas from Gazprom, the Russian supplier. However, the Lithuanian producer pays Gazprom a price which varies in accordance with changes in the published cif Northern Europe price for ammonia, whilst the Slovak company pays a fixed price (unchanged between 1997 and the IP) in Slovak crowns to a Slovak State-owned intermediary.

For all the above reasons, the Commission provisionally concluded that, in the absence of any alternative, Lithuania would be a reasonable choice of market economy third country, in accordance with Article 2(7)(a) of the basic Regulation.

b) *Russia*

i) Market economy status

(23) Article 2(7)(b) of the basic Regulation states that, in anti-dumping investigations concerning imports from Russia, normal value shall be determined in accordance with Article 2(1) to (6) for those producers which can show they meet the criteria laid down in Article 2(7)(c) i.e. that market economy conditions prevail in respect of the manufacture and sale of the like product concerned.

(24) As mentioned above, claims for market economy status were received from two producers. The Commission sought and verified all the information deemed necessary for the purposes of a determination of market economy status and carried out verifications at their premises.

The claims had to be rejected for the following main reasons:

Barter

Both companies engaged in barter trade. company A, which in fact was found to have purchased UAN from a related producer, paid for it on several occasions by delivering a product used by its supplier to produce compound fertilisers. Company B had been instructed by regional authorities to deliver UAN to farmers, the value of which would be offset against its tax bills. The farmers were to deliver grain to a State-owned agricultural consortium for use by the Regional Food Fund. Nearly half of company B's domestic sales of UAN were accounted for in this way.

Prices

Company A did not have its own marketing department and had no influence over export prices. All export sales were handled by a related trading company. Company A's domestic sales were made to a related company, which in turn resold the product on the Russian market. Since this related company did not cooperate, it was not possible to examine domestic sales in the light of the conditions set out in Article 2(7)(c) of the basic Regulation.

Costs and inputs

Company A claimed to purchase urea and ammonium nitrate from a related company for mixing in its own production facilities. In fact, it was billed for UAN, not for its constituents, and thus it is to be considered more an intermediary than a genuine producer.

Energy

For company B, the cost of energy, i.e. a major input for the production of UAN, did not reflect market values. The company reported that, since 1998, a series of discount schemes had been introduced by Presidential decree to encourage customers to pay cash for electricity and gas. For electricity, the cash discounts allowed to range from 30 % to 50 % and for gas, from 25 % to 50 %, the sole proviso being that the discounted energy price should not fall below the full primary costs of the supplier. In other words, and independently of the fact that these discounts were a clear indication of State interference in the market, prices did not reflect the full cost of energy, let alone its true market value.

Accounts

Finally, neither company had accounting records independently audited in line with international accounting standards, and there were significant deviations from those standards in several important areas (e.g. depreciation and fixed asset revaluation rates). Moreover, it appeared that the basic purpose of the accounts was to meet the requirements of the tax authorities and not to provide a complete picture of the company's situation at the end of the accounting period.

In view of the above, the Commission determined that neither company fulfilled all the criteria for granting market economy status which are set out at Article 2(7)(c) of the basic Regulation. In addition, it has been decided to reject the claims for individual treatment on the grounds that one company is not an exporting producer and that the other is not sufficiently free of State influence.

The producers concerned and the Community industry were given an opportunity to comment on the above findings. No comments were received.

ii) Normal value, export price and comparison

(25) For both cooperating and non-cooperating Russian companies normal value was established as described for Lithuania (see recital 16).

(26) For one cooperating producer, which sold to independent customers in the Community, the export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community. For the other cooperating producer sales were made via a related trading company in the Channel Islands (part of the customs territory of the Community), and the export price was established by reference to the resale prices actually paid or payable to it. Adjustments were made for all costs incurred between importation and resale by that trader plus a reasonable margin for profit, based on that found in the investigation to have been attained by independent importers of the product concerned, in accordance with Article 2(9) of the basic Regulation.

(27) As far as concerns non-cooperating companies, the cif value according to Eurostat for Russian imports was used as a basis for establishing the export price, after removal of the cooperating companies' exports. This price was then reduced by an amount corresponding to the weighted average of the difference between fob and cif prices charged by the two cooperating companies, in order to convert it to fob (ex-Russia frontier) level.

(28) The normal value and export prices were compared on a fob (ex-exporting country frontier) basis. Adjustments were made for differences in payment terms, transport, insurance, loading and ancillary costs, in accordance with Article 2(10) of the basic Regulation.

iii) Dumping margin

(29) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for Russia was established on the basis of a comparison of constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price, the provisional countrywide weighted average dumping margin is 24,1 %.

c) *Belarus*

i) Normal value, export price and comparison

(30) As in the case of Russia, normal value was established as described at recital 16.

The export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community.

The normal value and export prices were compared on a fob (ex-exporting country frontier) basis. For that purpose, adjustments were made for differences in transport, insurance, loading and ancillary costs, in accordance with Article 2(10) of the basic Regulation.

ii) Dumping margin

(31) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price, the provisional countrywide dumping margin for Belarus is 33,0 %.

d) *Ukraine*

i) Cooperation

(32) The Commission sent questionnaires to the two companies mentioned in the complaint. One replied to the questionnaire within the time limit, stating that it had not exported to the Community at all during the IP. No reply was received from the second company. It should be noted that substantial export quantities originating in this country are recorded in Eurostat statistics.

ii) Normal value, export price and comparison

(33) As in the case of Russia and Belarus, normal value was established as described at recital 16.

In the absence of information from the exporting producers concerning export prices, the Commission made its findings on the basis of the facts available, in this case Eurostat figures, in accordance with Article 18 of the basic Regulation. In order not to reward non-cooperation, the lowest monthly cif price for exports from Ukraine was used to establish the export price.

The normal value and export prices were compared on a fob (ex-exporting country frontier) basis. Adjustments for differences in transport, insurance, loading and ancillary costs, and for commissions, were made, in the absence of any other more reliable information, on the basis of information contained in the complaint.

iii) Dumping margin

(34) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price, the provisional countrywide dumping margin is 38,7 %.

D. **DEFINITION OF THE COMMUNITY INDUSTRY**

(35) The complainant Community producers represent more than 85 % of the Community production of UAN solutions and therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(36) In this respect, some interested parties have argued that certain complainant Community producers were importing UAN solutions originating in the countries concerned and could therefore not be considered as forming part of the Community production and consequently the Community industry.

The investigation has shown that indeed some complainant Community producers had imported the product concerned originating in the exporting countries concerned. It was, however, established that this import activity does not alter the fact that the primary interest of these companies was in the own production of UAN and not in importing. In addition, these imports do not represent any significant part of the sales of the importing Community producers' sales in the Community. Finally, the resales of these imports were made at the same price level as the UAN solutions manufactured and sold by the complainant Community producers in the Community.

Consequently, it is provisionally concluded that these Community producers should not be excluded from the definition of the Community industry.

E. **INJURY**

(37) As can be seen below, the overall situation of the Community industry followed an upward trend between 1995 and 1997, from which year onwards it started to deteriorate. This development should be seen in the light of the measures introduced against imports of UAN solutions originating in Poland and Bulgaria [1], which started to take effect as from 1995.

[1] Council Regulation (EC) No 3319/94 (OJ L 350, 31.12.1994, p. 20).

1. **Community consumption**

(38) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the information contained in the complaint concerning the sales volumes of the remaining Community producers, information provided by the cooperating exporting producers concerning their export volume and Eurostat figures for other third countries. All volumes have been, where appropriate, adapted so as to correspond to UAN solutions with a nitrogen content of 32 %.

On this basis, Community consumption increased from 3 155 000 tonnes to 3 297 000 tonnes, i.e. by 4,5 % between 1995 and the IP. Between 1995 and 1997 it decreased significantly, to increase rapidly after that year.

2. **Imports from the countries concerned** [1]

a) *Cumulative assessment of the effects of the imports concerned*

(39) It has firstly been examined whether imports from all countries concerned should be assessed cumulatively, taking into account the conditions set out in Article 3(4) of the basic Regulation. In this respect, the investigation has shown the following.

i) Slovak Republic

(40) As regards the volume of imports into the Community, the exporting producer from the Slovak Republic has argued that this volume was negligible in accordance with Articles 9(3) and 5(7) of the basic Regulation. However, the information provided by this sole Slovak exporting producer and Eurostat shows that Slovak exports represent around 2 % of the Community consumption and are therefore not negligible.

This exporting producer has further argued that its exports of UAN solutions should not be cumulated with the rest of the countries concerned in view of the different conditions of competition with respect to the imports from the other countries concerned, pointing to the different evolution of prices, import volumes and market shares and that imports originating in the Slovak Republic were competing only with the geographically closest Community producers.

It is the established practice of the Community institutions, when there are diametrically different market behaviours between the different countries concerned, to assess separately the effects that the imports have on the Community industry.

The investigation has shown that both volumes and market shares of the imports originating in the Slovak Republic were at the same level in the IP as compared to 1995, unlike the development found in the remaining countries concerned. Furthermore, import volumes from the Slovak Republic were the lowest of all countries concerned during the IP. As to the prices of imports originating in the Slovak Republic, although they followed the same trend as the other countries concerned, they were at a higher level after 1997. Finally, as opposed to the imports originating in all the other countries concerned, no price undercutting has been found for the imports originating in the Slovak Republic.

For these reasons, it is provisionally concluded that imports originating in the Slovak Republic should be assessed separately from the other imports subject to the present investigation.

ii) Belarus

The exporting producer from Belarus argued that its exports should be decumulated and assessed separately in view of the different conditions of competition with respect to the other countries concerned, as evidenced by the differences in evolution of import volumes and market shares by comparison to these other countries concerned.

The investigation has shown that import volumes from Belarus and the corresponding market shares decreased between 1995 and 1997, and increased thereafter, and therefore followed the trend of the five countries concerned as a whole. In addition, import volumes were substantial and the market share was 6,1 % during the IP. Furthermore, as was the case for the other countries concerned, the average prices of UAN solutions originating in Belarus followed a downward trend since 1996.

For these reasons, it is provisionally considered appropriate to reject the request for decumulation by the exporting producer from Belarus and to cumulatively assess imports from Belarus with those originating in the other remaining countries concerned.

iii) The remaining countries concerned (Algeria, Lithuania, Russia, and Ukraine)

(41) As to the remaining countries concerned, the dumping margins found are more than *de minimis*, the volumes of imports are not negligible and the cumulative assessment appears appropriate in view of the conditions of competition both between the imports and between the imports and the like Community product. This is evidenced by the fact that all import volumes were substantial and their market share has increased, in

[1] For confidentiality reasons, given that in some of the countries concerned there is only one exporting producer, the figures contained in this Regulation relating to them will be indexed or only given approximately.

particular since 1996. Moreover, their prices have considerably decreased since 1996 and they have undercut the sales prices of the Community industry, while using the same or similar channels of trade. For these reasons, it is provisionally concluded that imports originating in the remaining countries concerned and Belarus (hereinafter referred to as 'the five countries concerned') should be assessed cumulatively.

b) *Volume and market share of dumped imports*

i) The five countries concerned

(42) The import volume of UAN solutions originating in the five countries concerned increased from around 800 000 tonnes to around 1 500 000 tonnes, i.e. by around 87 % between 1995 and the IP. It should be noted that while they decreased between 1995 and 1997, as from that year to the IP they increased by around 200 %, while between 1997 and the IP, the Community consumption increased by around 14 %.

The market shares of the imports from the five countries concerned increased from 26,5 % in 1995 to 44,2 % in the IP, i.e. by 17,7 percentage points. More particularly, the market share first decreased between 1995 and 1997 and then more than doubled between 1997 and the IP.

ii) Slovak Republic

(43) Imports from the Slovak Republic were at the same level in the IP as compared to 1995, both in terms of volume and market shares. Moreover, both import volume and market share started to decrease sharply after 1997.

c) *Prices of dumped imports*

i) Price evolution [1]

— The five countries concerned

(44) The weighted average import prices of imports originating in the five countries concerned decreased from ECU 89,8/t to ECU 67/t, i.e. by 25,4 % between 1995 and the IP. While prices reached a peak in 1996, they decreased significantly thereafter by 34 %.

— Slovak Republic

(45) As mentioned at recital 40, although the prices of imports originating in the Slovak Republic followed the same trend throughout the period as the other countries concerned, they did not fall as much after 1997 when the imports concerned significantly increased.

[1] For the assessment of price trends, in order to compare coherent data, only Eurostat data were used, whereas for the calculation of price undercutting and injury margins, information provided by exporting producers was used where available.

ii) Undercutting

(46) It was examined whether the exporting producers of the five countries concerned undercut the prices of the Community industry during the IP. For this analysis, the cif prices of the exporting producers of UAN solutions have been duly adjusted to a Community frontier ex-quay customs-duty paid-level (DEQ) and compared, at the same level of trade, to the Community producers' ex-works prices.

The undercutting margins found on this basis per country, expressed as a percentage of the Community producers' prices, are as follows:

Country	Undercutting
Algeria	Between 2 % and 6 %
Belarus	Between 4 % and 8 %
Lithuania	Between 5 % and 10 %
Russia	6,7 %
Ukraine	16,7 %

(47) In line with the price behaviour and development of imports of the Slovak exporting producer discussed earlier, no price undercutting was found.

3. **Situation of the Community industry**

a) *Production*

(48) The Community industry's production of UAN (all volumes have been adapted, when applicable, so as to correspond to UAN solutions with a nitrogen content of 32 %) increased by 2,4 % between 1995 and the IP, i.e. from 1 484 000 tonnes to 1 520 000 tonnes. The most significant increase took place between 1995 and 1997, at a time when anti-dumping measures were imposed on imports of UAN originating in Poland and Bulgaria. Thereafter, production decreased between 1997 and the IP by 9,6 %.

b) *Capacity and capacity utilisation rates*

(49) The total production capacity of the Community industry was, by and large, stable over the period under consideration. Capacity utilisation increased from 38 % in 1995 to 43 % in 1997 and subsequently fell back to the 1995/1996 level. It should be noted that capacity utilisation is not a meaningful indicator for this type of production and industry since it is affected by the production of other products which can be produced on the same production equipment.

c) *Sales in the Community*

(50) The sales volume of the Community industry increased by 20,9 % between 1995 and 1997 from 1 446 000 tonnes to 1 748 000 tonnes and then decreased to 1 598 000 tonnes, i.e. by 8,6 % between 1997 and the IP.

d) *Market share*

(51) The Community industry's market share increased from 45,8 % in 1995 to 60,7 % in 1997 and then decreased by around 12 percentage points to 48,5 % in the IP.

e) *Prices of the Community industry*

(52) The Community producers' average net sales price increased by 3,8 % between 1995 and 1996 from ECU 111,3/t to ECU 115,5/t and then decreased to ECU 83,4/t in the IP, i.e. a fall by 27,8 %.

f) *Profitability*

(53) The weighted average profitability of the Community industry deteriorated by 17,1 percentage points between 1995 and the IP, from 4,9 % to −12,2 %. In parallel with the price development, the profitability was highest in 1996 and decreased between that year and the IP, by 18,4 percentage points.

g) *Employment*

(54) Employment in the Community industry, while increasing between 1995 and 1996/1997, when it was at 339 employees in both years, decreased thereafter to 311 employees in the IP, a decrease of 8,3 %.

h) *Investment*

(55) The Community industry increased its investments between 1995 and the IP, with a peak in the year 1998 owing to large investments in preceding production steps. The most important investments between 1995 and the IP were investments in production facilities for urea and nitric acid, which are both raw materials for the production of UAN solutions but are also used for other purposes such as the production of solid ammonium nitrate and solid urea.

4. **Conclusion on injury**

(56) A marked deterioration of the situation of the Community industry has been found in particular between 1997 and the IP, when the five countries concerned were able to expand their export volume to the Community by around 200 %, also benefiting from the substantial decrease in market share of other third countries. In an increasing market this meant that between 1997 and the IP the Community industry lost around 12 percentage points of market share and the corresponding sales volume whereas the imports originating in the five countries concerned gained around 26 percentage points. The investigation has shown that during the IP, the imports concerned were made at prices significantly undercutting those of the Community industry.

In terms of price development, the Community industry managed to increase its average prices between 1995 and 1996. However, their sales prices eroded considerably thereafter. This had a negative impact on its profitability, which substantially deteriorated as from 1997 to reach a level of −12,2 % during the IP.

The above deterioration of the situation of the Community industry, in particular since 1997 was such that it is provisionally concluded that the Community industry has suffered material injury in the IP.

F. **CAUSATION**

1. **Introduction**

(57) According to Article 3(6) and (7) of the basic Regulation, the Commission, in order to reach conclusions on the cause of the injury suffered by the Community industry, examined the impact of all known factors and their consequences on the situation in that industry. Such analysis ensures that any injury caused by factors other than dumped imports is not attributed to the dumped imports.

2. **Effect of the dumped imports**

a) *General*

(58) UAN solutions are a commodity with no difference in quality or applications between the imported product and the one produced in the Community. Therefore, UAN solutions produced in the Community and UAN solutions imported from the countries concerned are in direct competition with each other mainly on the basis of price.

i) The five countries concerned

(59) Between 1997 and the IP, dumped imports from the five countries concerned significantly increased in terms of volume (around 200 %) and of market shares (from around 18 % to around 44 %) and they undercut the prices of the Community industry. This coincided with the deterioration of the situation of the Community industry in terms of loss of market share, price depression as well as deteriorating profitability.

The dumped imports from the five countries concerned prevented the Community industry from benefiting from the anti-dumping measures imposed on imports from Poland and Bulgaria. In terms of volume, the five countries concerned basically took over most of the market shares held previously by Poland and Bulgaria while the Community industry could only secure a small part of this share. Furthermore, the significant increase of the market share of the dumped imports between 1997 and the IP coincided with the downward trend of the situation of the Community industry, which lost market share.

When faced with low-priced imports originating in the five countries concerned, the Community industry had the possibility of either maintaining its prices with a risk of losing sales volumes, or following the low prices of dumped imports with negative consequences on profitability. Indeed, as from 1997, the Community industry substantially lowered its sales prices. This had a negative impact on its profitability, which became negative. This clearly illustrates the price sensitivity of the market and the important impact of the pricing policy of the exporting producers of the five countries concerned.

It is therefore provisionally concluded that the dumped imports from the five countries concerned have caused material injury to the Community industry.

ii) Slovak Republic

(60) As far as the Slovak Republic is concerned, no price undercutting has been found. Slovak imports were at the same level in the IP as compared to 1995. Given the relatively low import volumes, the small and stable market share and the fact that there is no price undercutting, it is provisionally concluded that imports originating in the Slovak Republic have not had an impact to a degree such as to be classified as material, within the meaning of Article 3(5) and (6) of the basic Regulation.

3. **Effect of other factors**

a) *Imports from other third countries*

(61) The import volume of UAN solutions from other third countries decreased from about 669 000 tonnes in 1995 to around 37 000 tonnes in the IP, i.e. by 94,5 %. The most important suppliers in this group of countries during the IP were Mexico and the Czech Republic. Market shares of the imports from other third countries decreased from 21,2 % in 1995 to 1,1 % in the IP, i.e. a decrease of 20,1 percentage points, which is mainly related to the anti-dumping measures concerning imports from Bulgaria and Poland.

Given the decrease in terms of volume and market share of the imports originating in other third countries, it is obvious that these imports did not contribute to the material injury suffered by the Community industry.

b) *Other factors*

(62) The Commission also examined whether factors other than the abovementioned might have contributed to the injury suffered by the Community industry, having regard to, in particular, a contraction in demand or the changes in the patterns of consumption, developments in supply and in technology and productivity of the Community industry.

As to the development of supply, at a worldwide level, the Chinese decision in April 1997 to ban imports of urea and to replace them by domestic production led to a worldwide overcapacity for nitrogen fertilisers. It has been argued that the subsequent worldwide oversupply and fall in prices for nitrogen fertilisers has been a major factor causing the injury suffered by the Community industry. However, the investigation has shown that the prices of dumped imports had decreased substantially even before the Chinese decision. Furthermore, the Community industry itself was not directly affected because it did not export to China. In any event, the existence or not of a situation of oversupply is no justification for a significant surge in low-priced dumped imports.

Concerning the changes in the pattern of consumption, it has been argued that the increase in set-aside areas of agricultural farmland led to a reduction in the overall consumption of fertilisers in the Community. However, it has been established as set out above that the market for UAN solutions has steadily increased since 1997. At the same time, it has been established that the Community industry did not benefit from this expansion of the market, as opposed to the exporting producers from the countries concerned.

In relation to the developments in technology and productivity of the Community industry, it has been established that the Community industry has carried out considerable investments in order not to lose competitiveness.

Thus, it can be concluded that the effect of factors other than the dumped imports were not such as to break the causal link between the dumped imports and the material injury suffered by the Community industry therefrom.

4. **Conclusion on causation**

(63) In view of the coincidence in time between, on the one hand, the price undercutting established, the significant market share gained by the dumped imports from the countries concerned and, on the other hand, the corresponding loss of market share suffered by the Community industry, as well as the reduction of its sales prices and the decline of its profitability, it is provisionally concluded that the dumped imports originating in the five countries concerned have caused material injury to the Community industry.

G. **COMMUNITY INTEREST**

1. **Preliminary remark**

(64) In accordance with Article 21 of the basic Regulation, the Commission examined whether the imposition of anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers and traders and the users of the product concerned to the extent that the relevant interested parties submitted the information requested in this respect.

In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties. The Commission sent questionnaires to the Community industry, 29 importers/traders, one importers' association and two associations of users of the product concerned. Thirteen importers/traders as well as the importers' association replied. As to the users' associations, none of them replied to the questionnaires or submitted any other information.

On this basis it was examined whether, despite the conclusions on dumping, on the situation of the Community industry and on causation, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in this particular case.

2. **Interest of the Community industry**

(65) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This has been shown in particular by the positive development of its situation at a time when effective competition had been restored after the imposition in 1994 of anti-dumping measures concerning imports originating in Bulgaria and Poland and by the industry's investment in state of the art production capacity. However, owing to the pressure of the dumped imports on sales prices, in particular since 1997, it was not able to benefit from the imposition of antidumping measures on imports originating in Poland and Bulgaria.

Despite this structurally viable background, it cannot be excluded however, that some companies of this industry would reduce or even cease their manufacturing activities for the product concerned in the Community if no measures against injurious dumping were taken. This conclusion is justified in view of the duration and extent of financial losses suffered owing to dumped imports (between 1997 and the IP, the Community industry has suffered increasing losses). Indeed, without measures, the price-depressive effect of the dumped imports will continue to frustrate all efforts of the Community industry to achieve a satisfactory margin of profitability.

On the other hand, the imposition of measures would enable this industry to maintain and restore its activities in the Community. With the adoption of anti-dumping measures, overall employment in the Community in relation to the product concerned would thus be secured and even expected to rise.

3. **Interest of importers/traders**

(66) Almost all importers/traders which replied to the questionnaire have expressed their opposition to anti-dumping measures, as these would lower their already low profit margin and might force some of them to reduce personnel, to switch to other products or, in extreme cases, to cease activity. They claimed that the Community industry was unlikely to be able to satisfy demand during the peak season despite the low level of capacity utilisation. They therefore consider that any anti-dumping measures would not be in the interest of the Community, if as a consequence of these measures imports of UAN solutions would stop completely.

In this respect it should be noted, that, given the level and nature of the measures proposed, it is considered that imports will continue to take place, albeit at non-injurious prices. Furthermore, the investigation has established that the importers/traders as a rule do not only deal in UAN solutions but also, to a significant extent, in other fertilisers as well. Nevertheless, it cannot be excluded that some importers will face negative consequences after the imposition of anti-dumping measures.

4. **Interest of users**

(67) Users of the product concerned are farmers in the Community. Demand for nitrogen fertilisers appears to be relatively inelastic and farmers tend to buy from the cheapest source available. Farmers therefore have benefited from low prices for UAN solutions in the most recent agricultural seasons.

However, the fact that there has been no cooperation from user-associations justifies the provisional conclusion that anti-dumping measures will most likely not have a decisive impact on the users. Were any anti-dumping measures to be imposed, the cost of UAN solutions for farmers would indeed be likely to increase. However, fertilisers represent only a very small part of total production costs so that the possible negative effects on farmers are unlikely to offset the positive effect of measures against injurious dumping.

5. **Competition and trade distorting effects**

(68) With respect to the effects of possible measures on competition in the Community, some interested parties have argued that duties would lead to the disappearance of the exporting producers concerned from the Community market, thus considerably weakening competition, and to an increase in the prices of UAN solutions.

However, some of the exporting producers concerned will probably continue to sell their products albeit at non-injurious prices, as they have an increasingly strong market position. The imposition of anti-dumping duties on those exporting producers for which higher dumping and injury margins were established is likely to lead to a drop in their sales volume and market share. However, other exporting producers concerned are not expected to be significantly affected given the level and the nature of the duties proposed. Finally, it cannot be excluded that once prices reach a level at which the effects of injurious dumping are removed, imports from other third countries will also be reoriented towards the Community market. Therefore, it is likely that there will still be a number of competitors to the Community producers on the market and in view of the large number of producers in the Community, as well as the transparency of the market, users will continue to have the choice of different suppliers of the product concerned.

On the basis of the above, competition will most likely remain strong after the imposition of anti-dumping measures. There will be an important number of actors in the market, which will be able to satisfy the demand. Thus, the imposition of anti-dumping duties will be unlikely to limit the choice of the end users or weaken competition.

6. **Conclusion on Community interest**

(69) Given the above reasons, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties.

H. **PROVISIONAL MEASURES**

1. **Injury elimination level**

(70) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

For establishing the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.

In order to establish the level of duty adequate to remove injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the undercutting calculations, with the non-injurious price of UAN solutions sold by the Community industry on the Community market. The non-injurious price has been obtained by adding to the full unit cost of production a profit margin that may reasonably be reached in the absence of injurious dumping. After consideration of various submissions by the complainants on that issue, the Commission came to the provisional conclusion that a profit margin of 5 % would allow the Community industry a profitability that it could have expected in the absence of the dumped imports. The difference resulting from this comparison was then expressed as a percentage of the total cif import value.

2. **Provisional measures**

a) *The five countries concerned*

(71) In the light of the foregoing, it is considered that in accordance with Article 7(2) of the basic Regulation a provisional anti-dumping duty should be imposed at the level of the dumping margins found, except for Belarus for which the duty should be imposed at the level of the injury margin which is lower. For the reasons set out in recitals 15 and 19, the residual duties for Algeria and Lithuania have been set at the same level established for the sole producer in each country.

In order to ensure the efficiency of the measures and to discourage the price manipulation which has been observed in some previous proceedings involving the same general category of product, i.e. fertilisers, it is considered appropriate to impose the duties in the form of a specific amount per tonne.

On the basis of the above, the provisional duty amounts are as follows:

Country	Dumping margin	Basis for anti-dumping duty	Amount of duty (per tonne)
Algeria	13,3	13,3	EUR 9,42
— Fertalge Industries	13,3	13,3	EUR 9,42
Belarus	33,0	27,8	EUR 18,02
Lithuania	7,6	7,6	EUR 5,19
— JSC Achema	7,6	7,6	EUR 5,19
Russia	24,1	24,1	EUR 15,46
Ukraine	38,7	38,7	EUR 21,47

b) *Slovak Republic*

(72) As imports originating in the Slovak Republic are provisionally considered not to have contributed to the material injury suffered by the Community industry, it is provisionally not considered appropriate to impose any anti-dumping duty on imports of UAN solutions originating in the Slovak Republic at this stage of the proceeding. However, the Commission will continue to investigate the matter before arriving at a definitive determination.

3. **Undertakings**

(73) The exporting producer in Algeria has offered a price undertaking in accordance with Article 8(1) of the basic Regulation. The Commission considers that the undertaking offered by the exporting producer concerned can be accepted since it eliminates the injurious effect of the dumping. Furthermore, the regular and detailed reports which the company undertook to provide to the Commission will allow an effective monitoring.

(74) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented, exemption from the duty is conditional on presentation to the relevant Member States' customs' services of a valid undertaking invoice issued by the exporting producer from whom the undertaking is accepted and containing the information listed in the Annex. Where no such invoice is presented or when it does not correspond to the product presented to the customs' services, the appropriate rate of anti-dumping duty will be payable in order to avoid circumvention of the undertaking.

(75) In the event of a breach or withdrawal of the undertaking, an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation.

(76) In accordance with Article 8(6) of the basic Regulation, the investigation of dumping, injury and Community interest will be completed, notwithstanding the acceptance of undertakings during the course of the investigation.

4. **Final provision**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of urea and ammonium nitrate solutions falling within CN code 3102 80 00 and originating in Algeria, Belarus, Lithuania, Russia, and Ukraine.

2. The amount of duty shall be equal to the fixed amount in euro per tonne of solution of urea and ammonium nitrate shown below for the countries concerned:

Country	Company	Amount of duty (per tonne)	TARIC additional code
Algeria	All companies	EUR 9,42	A999
Belarus	All companies	EUR 18,02	—
Lithuania	All companies	EUR 5,19	—
Russia	All companies	EUR 15,46	—
Ukraine	All companies	EUR 21,47	—

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 amount of 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.

4. Notwithstanding paragraph 1, the provisional duty shall not apply to imports of the product concerned manufactured and directly exported (i.e. shipped and invoiced) to the first independent customer in the Community acting as an importer by the company named in Article 2(1) when such imports are in conformity with Article 2(2).

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

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

Article 2

1. The undertaking offered by the following company in connection with the anti-dumping proceeding concerning imports of urea and ammonium nitrate solutions falling within CN code 3102 80 00 and originating in Algeria, Belarus, Lithuania, Russia, and Ukraine is hereby accepted:

Country	Company	TARIC additional code
Algeria	Fertalge Industries SpA	A107

2. When the request for release for free circulation pursuant to an undertaking is presented, exemption from the duty shall be conditional on presentation to the relevant Member States' customs services of a valid undertaking invoice issued by the company mentioned in Article 2(1). The essential elements of the undertaking invoice are listed in the Annex to this Regulation. Imports accompanied by such an invoice shall be declared under the Taric additional code provided for in Article 2(1).

[1] OJ L 253, 11.10.1993, p. 40.

Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the undertaking invoice.

Article 3

Without prejudice to Article 20 of Regulation (EC) No 384/96, the interested parties which made themselves known within the time limit specified in the notice of initiation may make known their views in writing and apply to be heard orally by the Commission within 30 days of the date of entry into force of this Regulation.

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

Article 4

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 16 March 2000.

For the Commission

Pascal LAMY

Member of the Commission

ANNEX

Elements to be indicated in the undertaking invoice referred to in Article 2(2)

1. The TARIC additional code under which the goods on the invoice may be customscleared at Community borders (as specified in the Regulation).
2. The exact description of the goods, including:
   - — CN code,
   - — the nitrogen ('N') content of the product (in percentages),
   - — quantity (to be given in tonnes).
3. The description of the terms of the sale, including:
   - — price per tonne,
   - — the applicable payment terms,
   - — the applicable delivery terms,
   - — total discounts and rebates.
4. Name of the unrelated importer to which the invoice is issued directly by the company.
5. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by … (company), and accepted by the European Commission through Regulation (EC) No 617/2000. I declare that the information provided in this invoice is complete and correct.'