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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 132/2001

of 22 January 2001

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ammonium nitrate originating in Poland and Ukraine, and terminating the anti-dumping proceeding in respect of imports originating in Lithuania

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 Article 9 thereof,

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

Whereas:

A. **PROVISIONAL MEASURES**

(1) The Commission, by Regulation (EC) No 1629/2000 [2] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Poland and Ukraine.

(2) In the same Regulation, it was provisionally concluded that no anti-dumping duty should be imposed on imports of the product concerned originating in Lithuania, also subject to the same investigation, since these imports were found not to have been dumped.

B. **SUBSEQUENT PROCEDURE**

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures on imports of ammonium nitrate originating in Poland and Ukraine, several interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

C. **PRODUCT CONCERNED AND LIKE PRODUCT**

(7) Since no new arguments regarding the product concerned and the like product were put forward by any of the interested parties, the facts and findings as set out in recitals 7 and 8 of the provisional Regulation are hereby confirmed.

D. **DUMPING**

1. **Lithuania**

(a) Normal value

(8) The complainant, the European Fertiliser Manufacturers Association (EFMA), made a number of comments on the provisional findings under this heading:

— the percentage of profitable domestic sales achieved by the cooperating exporting producer should have been near to zero because dumped Russian imports over much of the investigation period (IP) had depressed prices in Lithuania;

— the lowest possible constructed normal value, based on the complainant's information, was above export prices and therefore there must have been dumping;

— the Lithuanian producer's record of low profitability cast doubt on its future over the medium term. Its sales should not, therefore, have been considered as being in the ordinary course of trade.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 187, 26.7.2000, p. 12.

(9) All these comments were closely examined. With regard to the cost of production, it should be noted that it had been verified and found not to be unreliable or underestimated. As far as the level of profitable sales was concerned, this had been determined on the basis of those sales prices found to be above the unit cost of production, in accordance with Article 2(4) of Regulation (EC) No 384/96 (the 'basic Regulation'). The precise level of profitable sales cannot be disclosed for reasons of confidentiality but it was still substantial and could, in accordance with the aforementioned provision, be used as a basis for determining normal value. As far as the impact of Russian imports on prices was concerned, this had indeed been reflected in lower sales prices which, if unprofitable, had been excluded from the calculation of normal value.

(b) Export price, comparison

(10) In the absence of any comments under these headings, the provisional findings, as set out in recitals 11 and 12 of the provisional Regulation are confirmed.

(c) Dumping margin

(11) The complainant argued that the transaction-to-transaction methodology should have been used to establish the dumping margin, because the weighted average to weighted average method masked the Lithuanian producer's pricing strategy (which was allegedly designed to avoid anti-dumping measures) and did not reflect the full degree of dumping.

(12) The normal method used to establish whether there is dumping is to compare the weighted average normal value with the weighted average of all export transactions, in accordance with Article 2(11) of the basic Regulation. The transaction-to-transaction method had not been used because of the very large number of transactions (several thousand) and the insurmountable practical difficulties involved in matching individual normal values with individual export prices. This claim was therefore rejected. However, it is noted that even a comparison of the weighted average normal value with individual export prices, which was based on a regional pattern found in the export prices, showed a dumping margin below the *de minimis* level.

(13) The complainant argued further that as the number of transactions was very large, sampling should have been applied taking 5 000 tonne export shipments and comparing them with similar sales to domestic customers.

(14) For the purpose of establishing the dumping margin, sampling of transactions may be considered appropriate in cases where the product concerned covers a large number of types/models or where the number of transactions is large, providing the sample is statistically valid or represents the largest possible volume of sales, in accordance with Article 17(1) of the basic Regulation. In this case, there was only one single type of product, and only one of the transactions on the export side equalled or exceeded 5 000 tonnes (none on the domestic side), whereas the total volume sold was several hundred thousand tonnes. Sampling, therefore, was not considered an appropriate method.

(15) The dumping margin (0 %) established in recital 13 of the provisional Regulation is therefore confirmed.

2. **Poland**

(a) Normal value, export price

(16) In the absence of any comments under these headings, the provisional findings, as set out in recitals 15 to 18 of the provisional Regulation, are confirmed.

(b) Comparison

(17) At the provisional stage, the level of trade claim concerning the price difference between sales to traders and dealers had been rejected. Since then, the exporting producer in question has been able to clarify the situation. Export sales were made to traders while domestic sales were (with one unrepresentative exception) made to dealers. On this basis, a downward adjustment to the price to dealers was granted. In order to quantify this adjustment, a lump-sum corresponding to 10 % of the gross margin (selling, general and administrative costs plus profit on dealers' sales) was deducted from the normal value. This lump-sum constitutes a surrogate for the dealers' mark-up. It was also found that the same adjustment should be granted to the other exporting producer.

(18) At the provisional stage, the in-season/off-season adjustment had been rejected. The producer then claimed that this was not justified because there was a pronounced seasonal effect on the prices of the product concerned in the Community market, but no such effect on the prices of ammonium nitrate in the Polish domestic market. Therefore, this difference affected the fair comparison between export price and normal value, and merited an adjustment in accordance with Article 2(10)(k) of the basic Regulation This claim was also re-examined but had to be rejected because it was found that there was a seasonal effect on ammonium nitrate prices in the Polish market as well, since customers had not, as alleged, paid the same prices irrespective of the season. This had not therefore affected price comparability, within the meaning of Article 2(10)(k) of the basic Regulation.

(c) Dumping margin

(19) One users' association objected that the Commission had not taken into account the depreciation of around 15 % in the zloty against the euro during the IP. It is pointed out that average monthly exchange rates were used for the calculations and therefore any material impact of the exchange rate evolution was eliminated.

(20) In the absence of any other comments concerning the methodology used for the calculation of the dumping margin, the methodology described in recital 20 of the provisional Regulation is confirmed. On this basis, taking into account the adjustment for level of trade granted, the definitive dumping margins for the cooperating exporting producers, as well as the residual dumping margin, expressed as a percentage of the cif Community frontier price, are set out below:

Anwil SA	31,2 %
Zaklady Azotowe Pulawy SA	22,3 %
Residual dumping margin	41,6 %

3. **Ukraine**

(a) Analogue country, normal value, export price

(21) In the absence of any comments concerning the choice of Poland as market economy third country, the provisional conclusion as set out in recitals 22 to 24 of the provisional Regulation is confirmed.

(b) Comparison

(22) At the definitive stage, the basis of the comparison was changed from fob to ex-works, because of the significant distances between the factories and the frontier. Moreover, since these costs account for a very high proportion of the selling price of bulk products such as the product concerned, the fob comparison could give an undue advantage to Ukrainian companies. The appropriate adjustments were therefore made to the export price in respect of the costs for transport from ex-works to port and for port services. In parallel, the normal value was also established on an ex-works basis. The cooperating exporting producers did not make any comment on this change.

(c) Dumping margin

(23) One users' association objected that the Commission had not taken into account the substantial depreciation of the Ukrainian currency during the IP and that this had affected the dumping margin. It is noted that for the determination of the export price Eurostat figures were used. Information on export prices contained in Eurostat is expressed in euro and is compiled on the basis of monthly exchange rates. Any alleged impact of the depreciation on the method used by the Commission for the calculation of the dumping margin is therefore eliminated.

(24) In view of the change in the basis of comparison from fob to ex-works level, the countrywide dumping margin, expressed as a percentage of the cif Community frontier price, is 67,6 %.

E. **INJURY**

1. **Definition of the Community industry**

(25) In the absence of new information the provisional findings concerning the definition of the Community industry, as described in recital 28 of the provisional Regulation are confirmed.

2. **Imports from Poland and Ukraine**

(a) Cumulative assessment

(26) One Polish exporting producer argued that imports of ammonium nitrate originating in Poland should not be cumulated with those originating in Ukraine in view of differences existing in the conditions of competition. The claim was based on the grounds that while Ukrainian imports were on average undercutting the prices of the Community industry by 12,5 %, the Polish imports were on average undercutting those prices by only 2,1 %.

(27) In this respect it should be noted that undercutting was found for both Poland and Ukraine. Moreover, Article 3(4) of the basic Regulation does not require that the levels of undercutting are in the same range. Indeed, it has been confirmed that a cumulative assessment is appropriate since the margin of dumping is more than *de minimis*. Both countries' import volumes and market shares are of the same order of magnitude, substantial and increased compared to 1995, and having regard to the conditions of competition between the imports from Poland and Ukraine, it is to be noted that the downward trend in prices is similar. Both countries' export prices were well below the prices of the Community industry and both were using the same or similar channels of trade. Given the above, and in the absence of any other new arguments, the findings of recital 30 of the provisional Regulation concerning the conditions for a cumulative assessment of the imports from the countries concerned are confirmed.

(b) Volume of imports

(28) Two Ukrainian producers, who had stated at the provisional stage that they had not exported directly to the Community during the IP, claimed that the Eurostat figures used for establishing the export price were different from the data of the Ukrainian Ministry of Statistics, which reported a significantly lower volume for the same period. However, this claim was not substantiated by any evidence. Moreover, as these statistics are export statistics which means that not every sale shown therein will ultimately be shipped to the specified destination, it was concluded that the Eurostat import statistics provided a more accurate picture. In addition the latest Eurostat figures were reviewed and no discrepancy from the figures used at the provisional stage was found.

(c) Undercutting

(29) As regards the price undercutting margins, one Polish exporting producer argued that the average profit margin of the importers used for the calculation of the ex quay customs duty paid (DEQ) export prices of the exporting producers in the Community, should be higher than as the one applied in the provisional calculation.

(30) In this respect, the Commission's provisional findings were based on the verified information provided by the cooperating importers in the Community. Since no new or substantiated evidence was provided by the exporting producer in this respect, the importers' profit margin used for the provisional determination of price undercutting is confirmed.

(31) The same exporting producer submitted that the unloading costs applied for the calculation of the DEQ export prices should amount to at least EUR 8,5 per tonne, and not to EUR 5,9, as used in the provisional calculation.

(32) In this respect, the evidence submitted by the exporting producer in support of its claim contained some elements which did not constitute unloading costs. In fact, a corrected version of the evidence submitted supported the provisional findings of the Commission, which are therefore confirmed.

(33) As regards the price difference between granular and prilled ammonium nitrate, the complainant submitted that after the IP, and in particular by the 2000/2001 season, the apparent price difference between prilled and granular ammonium nitrate had been eradicated in certain markets and therefore no allowance should be granted. One Polish exporting producer, however, claimed that the allowance for the price difference between granular and prilled ammonium nitrate should be EUR 10 per tonne, as in previous anti-dumping cases involving ammonium nitrate, and not EUR 5,8 per tonne, as used in the provisional calculation.

(34) It should be noted that in accordance with Article 6(1) of the basic Regulation, information relating to a period after the IP should not normally be taken into account. In considering whether the alleged development of prices after the IP should be examined, it was concluded that, as no evidence had been provided that the latest price developments would be of a lasting nature which makes the imposition of measures at the level proposed manifestly unsuitable, this information should not be taken into account. As regards the allowance in respect of the price difference between granular and prilled ammonium nitrate, the Commission based its provisional findings on the facts available, and applied the average price difference charged by the Community industry during the IP.

(35) In the absence of new evidence, the findings of recital 33 of the provisional Regulation concerning the undercutting margin calculations are confirmed.

(d) Situation of the Community industry

(36) In addition to the economic factors already analysed at the provisional stage, information relating to the impact of the magnitude of the margin of dumping, return on investments, cash flow, wages and the ability to raise capital has been examined for the period between 1995 and the IP. As regards return on investments and cash flow, the development was very much in line with that for profitability as established in recital 39 of the provisional Regulation. With respect to wages, they broadly followed the decline in the number of persons employed as established in recital 40 of the provisional Regulation. As concerns the ability to raise capital, fertiliser production companies form part of larger groups and no difficulties have been reported. As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

(37) On the basis of the above, the provisional findings as regards the material injury suffered by the Community industry during the IP are confirmed.

3. **Causation**

(38) One Ukrainian producer argued that, on the basis of Eurostat figures, imports of the product concerned originating in Ukraine accounted for only 4 % of total consumption in the Community, it was alleged that this represented an insignificant quantity which could not cause injury to the Community industry.

(39) In this respect, the effects of the imports originating in Ukraine have been assessed cumulatively with those originating in Poland, pursuant to Article 3(4) of the basic Regulation. In establishing whether the conditions for cumulation were met in this case (recital 30 of the provisional Regulation) the market share of the Ukrainian imports in the total Community consumption was found not to be negligible. The request was therefore rejected.

(40) One Polish producer submitted that one cause of the material injury suffered by the Community industry was the fact that prices for cereals had been declining since 1996 and that this had resulted in price pressure exerted from farmers on the ammonium nitrate producers' selling prices.

(41) Whilst there was a decline in cereal prices as from 1996, it is to be noted that ammonium nitrate is a commodity product with a high degree of price competition and, when compared with the role of factors such as the price depressive effects of the injurious dumping observed, any downward price pressure exercised by farmers could therefore not have had a decisive influence on market prices and could not in themselves have been the cause of the injury suffered. This argument therefore leads to the conclusion that there was no break in the causal link between the dumping and the injury found.

(42) One users' association argued that the Commission had underestimated certain factors which had allegedly caused the decrease in ammonium nitrate prices and the subsequent injury suffered by the Community industry, such as a declining consumption and the allegedly insufficient efforts of rationalisation undertaken by the Community industry — evidenced, *inter alia*, by a low rate of capacity utilisation.

(43) In addition, an importers' association submitted that the cause of the injury suffered by the Community industry was the global overcapacity in the industry.

(44) With respect to the question of declining consumption, it was analysed in the provisional Regulation and in the absence of any new information, the findings of the provisional Regulation are confirmed.

(45) As concerns the rationalisation efforts undertaken by the Community industry, it is to be noted that considerable investments were made, unrelated to the expansion of the production capacity of the product concerned, and a number of plants have recently been closed, which resulted in a reduction in the production capacity and the number of employees. It has been found that this demonstrates that sufficient rationalisation efforts have been made.

(46) As concerns the capacity utilisation rate and the question of global overcapacity in the industry, it is recalled that at the provisional stage this indicator was not considered to be a meaningful indicator of the situation of the Community industry (see recital 35 of the provisional Regulation). Moreover, while there might be, nevertheless, still some overcapacity in the industry concerned, this element has not been found to have an impact such as to break the causal link established between the dumping and the injury suffered by the Community industry.

(47) In the light of the above and in the absence of any new information, the provisional findings as described in recitals 46 to 49 of the provisional Regulation are confirmed.

4. **Community interest**

(48) One users' association argued that anti-dumping measures would decrease the income of British farmers, thus putting them in a much more difficult economic situation.

(49) In this respect, on the basis of information provided by the users' association, it was found that, during the IP, fertilisers represented on average 6 % of the total production costs for farmers.

(50) Given that imports from the countries concerned only represented 9 % of ammonium nitrate consumption in the Community market (11 % in the UK market), the level of the anti-dumping duty, and the fact that only part of any resulting price increase is likely to be passed on to the users, any increase in farmers' production costs is likely to be minor. Moreover, were the Community industry to increase not only the volume of its sales but also its prices, any such price increase would be limited given the existence of other sources of supply, namely imports from third countries not subject to measures.

(51) On the basis of the above, the limited impact on farmers was considered not to constitute a compelling reason against the imposition of anti-dumping measures.

(52) On the basis of the above, the provisional findings in recital 53 of the provisional Regulation are confirmed.

F. **ANTI-DUMPING MEASURES**

1. **Termination of the proceeding in respect of Lithuania**

(53) In view of the findings on imports originating in Lithuania, the proceeding in respect of this country should be terminated.

2. **Injury elimination level**

(54) In accordance with Article 9(4) of the basic Regulation, the anti-dumping duty should correspond to the dumping margin unless the injury margin is lower. For the purposes of establishing the level of measures to be definitively imposed, an injury elimination level has been established.

(55) It is to be noted that the arguments and the corresponding findings regarding the adjustments made for the price difference between granular and prilled ammonium nitrate in the context of the price undercutting calculation, equally refer to the injury margins calculation.

(56) In addition, as regards specifically the injury margins calculation, the complainant reiterated its statement that the profit margin that the Community industry might achieve in the absence of injurious dumping should be at least 10 %. However, no new evidence was submitted in this respect. At the same time, a Polish exporting producer submitted that a profit margin of 5 % should be used as had been done in previous anti-dumping cases involving fertilisers. As set out in recital 56 of the provisional Regulation, given the high profits reached by the Community industry in the years 1995 and 1996 for the product under consideration in this proceeding, it was considered that a profit margin of 8 % could reasonably be reached in the absence of injurious dumping.

(57) Subsequently, the methodology used for establishing the injury elimination level as described in recital 56 of the provisional Regulation is confirmed.

3. **Form and level of definitive measures**

(58) The complainant submitted that there were indications of the emergence of new forms of ammonium nitrate, i.e. mixtures of ammonium nitrate with other products, whose only purpose is to circumvent possible anti-dumping measures concerning ammonium nitrate. The attention of the customs authorities is drawn to this issue.

(59) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the injury margins found, except for one Polish exporting producer for which a definitive anti-dumping duty should be imposed at the level of the dumping margin found.

(60) In order to ensure the efficiency of the measures and to discourage the price manipulation which has been observed in some previous proceedings involving fertilisers, it is confirmed that the duties should be imposed in the form of a specific amount per tonne. These duties amount to:

Country	Basis for anti-dumping duty in %	Amount of duty (EUR per tonne)
Poland		
Anwil SA	25,2	23,13
Zaklady Azotowe Pulaway SA	22,3	20,65
All other companies	30,5	26,91
Ukraine		
All companies	43,4	33,25

(61) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(62) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

[1] European Commission
Directorate-General for Trade
Directorate B
TERV 0/10
Rue de la Loi/Wetstraat 200
B-1049 Brussels

4. **Collection of provisional duties**

(63) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 1629/2000, should be definitively collected at the rate of the duty definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ammonium nitrate other than in aqueous solution and mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight, falling within CN codes 3102 30 90 and 3102 40 90 and originating in Poland and Ukraine.

2. The amount of duty in EUR per tonne shall be as shown below for the products manufactured by the following companies:

Country	Company	Amount of duty (EUR per tonne)	TARIC additional code
Poland	Anwil SA ul. Tourunska 222, 87-805 Wloclawek Poland	23,13	A174
	Zaklady Azotowe Pulawy SA Al. Tysiaclecia P.P. 13, 24-110 Pulawy Poland	20,65	A175
	All other companies	26,91	A999
Ukraine	All companies	33,25	

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

5. The proceeding concerning imports of ammonium nitrate originating in Lithuania shall be terminated.

Article 2

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1629/2000 on imports of ammonium nitrate originating in Poland and Ukraine shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive anti-dumping duty shall be released.

Article 3

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. 40.

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

Done at Brussels, 22 January 2001.

For the Council
The President
A. LINDH