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# COUNCIL REGULATION (EC) No 900/2001

## of 7 May 2001

## imposing definitive anti-dumping duties on imports of urea ammonium nitrate solutions originating in Poland

(OJ L 127, 9.5.2001, p. 1)

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# COUNCIL REGULATION (EC) No 900/2001

## of 7 May 2001

## imposing definitive anti-dumping duties on imports of urea ammonium nitrate solutions originating in Poland

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Articles 11(2) and 11(3) thereof,

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

Whereas:

### A. PREVIOUS INVESTIGATION

(1) By Regulation (EC) No 3319/94 [2], the Council imposed a definitive anti-dumping duty on imports of urea ammonium nitrate solutions ('UAN') originating in Bulgaria and Poland. The measures applying to imports from Bulgaria consisted of a specific duty, except for one producer and one exporter from whom a joint undertaking was accepted by Commission Decision 94/825/EC [3]. Polish imports of UAN were made subject to a variable duty based on a minimum import price when directly invoiced by certain companies to an unrelated importer. In all other cases, imports of UAN from Poland were subject to a specific duty.

### B. INVESTIGATIONS CONCERNING OTHER COUNTRIES

(2) By Regulation (EC) No 1995/2000 [4], the Council imposed definitive anti-dumping duties on imports of UAN originating in Algeria, Belarus, Lithuania, Russia, and Ukraine. It was established that the imports of UAN originating in these other countries were dumped and had caused material injury to the Community industry. It was considered appropriate to impose duties in the form of a specific amount per tonne, in order to ensure the efficiency of the measures and to discourage any price manipulation.

### C. PRESENT INVESTIGATION

(3) Following the publication, in June 1999 [5], of a notice of the impending expiry of the anti-dumping measures in force, the Commission received a request for an expiry review lodged by the European Fertiliser Manufacturers Association (EFMA) on behalf of a major proportion of Community producers of UAN ('applicant Community producers'). The request alleged that injurious dumping of imports originating in Poland would be likely to recur if measures expired. The applicant Community producers did not request the initiation of an expiry review concerning imports originating in Bulgaria on the grounds that such recurrence was not likely for Bulgarian imports. Consequently the measures applicable to imports originating in Bulgaria expired on 1 January 2000.

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of

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[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 350, 31.12.1994, p. 20.
[3] OJ L 350, 31.12.1994, p. 115.
[4] OJ L 238, 22.9.2000, p. 15.
[5] OJ C 176, 22.6.1999, p. 14.

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a review, the Commission initiated an investigation pursuant to Article 11(2) of Regulation (EC) No 384/96 (the 'basic Regulation').

(5) At the same time, likewise after consultation of the Advisory Committee, the Commission initiated an *ex officio* interim review pursuant to Article 11(3) of the basic Regulation, limited to the form of the measures in force with respect to the imports originating in Poland ([1]). The Commission initiated this interim review in order to allow for a possible adaptation of the type of measures for Poland, in the event of the measures against Polish imports being maintained, taking into account the need to ensure the effectiveness of the measures and the form of measures which might eventually be imposed on imports of the same product originating in other countries.

(6) The investigation into the continuation and/or recurrence of dumping and injury covered the period from 1 January 1999 to 30 November 1999 ('IP'). The examination of the trends relevant for the assessment of a likelihood of a continuation and/or recurrence of injury covered the period from 1 January 1995 up to the end of the IP ('period under review').

(7) The Commission officially advised the applicant Community producers, the exporter and exporting producers in Poland, importers/traders, their representative associations, associations of users known to be concerned, and the representatives of the Polish Government 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 in the notice of initiation. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(8) The following Community producers replied to the questionnaire:

(a) Agrolinz Melamin GmbH, ADM — Linz, Austria

(b) DSM Agro BV — Sittard, Netherlands

(c) Fertiberia S.A — Madrid, Spain

(d) Grande Paroisse SA — Paris, France

(e) Hydro Agri Chafers — Immingham, United Kingdom

(f) Hydro Agri France — Nanterre, France

(g) Hydro Agri Rostock — Rostock, Germany

(h) Hydro Agri Sluiskil BV — Sluiskil, Netherlands

(i) Kemira Agro Rozenburg B.V. — Rotterdam, Netherlands

(j) SKW Stickstoffwerke Piesteritz GmbH — Wittenberg, Germany

(9) In view of the fact that the information provided by these same Community producers was duly verified in the framework of the proceeding referred to in recital 2 concerning imports of UAN originating in Algeria, Belarus, Lithuania, Russia and Ukraine, for which the investigation covered the years 1995 to 1998 as well as five months of the present IP, it was considered appropriate, in the current proceeding, not to carry out additional verification visits at the premises of the companies in question. However, the accuracy of the data provided was verified by examining their coherence and consistency with the previously verified data.

(10) The Commission sent out questionnaires to 20 unrelated importers/traders and to one association of importers. Nine answers were received including that from the association. None of these importers provided any specific figures since they did not import

([1]) OJ C 369, 21.12.1999, p. 22.

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UAN from Poland during the period under review and accordingly no verification visit was carried out.

(11) Following the receipt of a questionnaire reply, verification visits were also carried out at the premises of the following companies:

(a) Zaklady Azotowe 'Pulawy' SA, Pulawy ('ZAP'), an exporting producer

(b) CIECH SA, Warsaw, an exporter

## D. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(12) The product under consideration in this proceeding is urea ammonium nitrate solution, falling within CN code 3102 80 00. It is the same as in the original investigation, i.e. a liquid fertiliser commonly used in agriculture. It consists of a mixture of urea and ammonium nitrate in 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 element of the product, and it can vary between 28 % and 32 %.

(13) As the previous investigation has shown, UAN is a pure commodity product, having the same basic physical and chemical characteristics whatever the country of origin. Therefore UAN produced and sold in the Community by the applicant Community producers and UAN produced in Poland and sold domestically or exported to the Community are considered to be like products, within the meaning of Article 1(4) of the basic Regulation.

## E. LIKELIHOOD OF A RECURRENCE OF DUMPING

### 1. Preliminary remark

(14) Under Article 11(2) of the basic Regulation, the purpose of this type of review is to determine whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping. Since there were no imports of the product under consideration from Poland to the Community during the IP, the analysis focused on whether the removal of the measures would be likely to lead to a recurrence of dumping in significant volumes. In this respect, the pricing behaviour of Polish producers on third country markets was examined in order to determine whether the product under consideration was sold there at dumped prices. It has been further assessed whether, should the measures be repealed, the Polish producers would be likely to resume exporting UAN to the Community following the same pricing behaviour.

(15) It is recalled that, in the original investigation, the individual dumping margins found for the two producers amounted to 40 % and 27 % respectively. The investigation did not reveal the existence of any Polish UAN producers other than the two aforementioned producers.

(16) One company did not provide any detailed information on sales to other countries, domestic sales or cost of production, and was accordingly informed that the findings would be established on the basis of the facts available, in accordance with Article 18 of the basic Regulation, if the information was not submitted within a set time limit. No information was submitted subsequently by that company. It should be noted that, on the basis of information available, that company had a much smaller production capacity than the cooperating one.

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2. **Exports to third countries**

(a) *Export price*

(17) Exports by the cooperating producer were made directly to independent importers in other countries, mainly to the North American market which accounted for a high proportion (two thirds) of the company's total exports in the IP, and a smaller proportion (one third) to the Czech Republic. Polish exports to the USA and Canada accounted for a not insignificant part of combined total imports by these two countries, and represented a significant proportion of the producer's output.

(18) In view of the nature of this investigation, it was considered that it would be unreasonable to request, for the purpose of a likelihood of recurrence of dumping test, detailed information on exports for the whole IP. Instead, information was requested on all transactions covering the last three month period included in the IP. The export price was therefore determined on the basis of the prices paid or payable by unrelated importers in third countries during the said three month period. The cooperating producer challenged this approach at a later stage in the procedure and requested that data concerning the whole IP be used. In view of the lateness of the suggestion, it was not considered practicable to alter the basis of the analysis. Furthermore, even if unverified data for previous months were to be taken into account, the picture would not change so significantly as to alter the conclusions found regarding exports to third countries from Poland.

(b) *Normal value*

(19) For the cooperating producer, it was first determined that the total volume of domestic sales of UAN was representative in relation to export sales. Indeed, the sales volume on the Polish domestic market was higher than the sales volume exported to third countries. It was then determined whether these domestic sales had been made in the ordinary course of trade. In this regard, the investigation showed that the volume of sales above unit production cost represented more than 10 % but less than 80 % of all sales. Therefore normal value was established on the basis of the prices actually paid for all profitable sales of the product under consideration.

(c) *Conclusion on exports to third countries*

(20) For the cooperating producer, the normal value was compared with the export price for each country of destination on a weighted average to weighted average basis, after making certain adjustments to ensure a fair comparison.

(21) It was found that the export prices charged by the cooperating producer (which accounted for 90 % of total Polish exports in the IP) to the North American market were substantially below the normal value established for it, resulting in significant dumping margins in respect of its sales to both the USA and Canada. The export sales to these two countries accounted for two thirds of total export sales of this company. With regard to sales to the Czech Republic, a neighbouring market which accounted for the remaining one third of the company's total exports, little or no dumping was found. Indeed, the company adopted the same price strategy as for its domestic market.

(22) Since the other producer failed to provide detailed information, no calculations were made. It should be noted that this producer only exported to the Czech Republic, in relatively low volumes.

3. **Potential for a rise in dumped exports to the Community**

(23) The investigation established that Polish companies have the capacity to produce significant additional volumes for export to

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the Community. These additional volumes could well reach the significant levels found for the IP of the original investigation. Moreover, these exports would in all likelihood be made at dumped prices.

(a) *Cooperating exporting producer*

(24) Given the cooperating producer's relatively low level of capacity utilisation in the IP, there is room for a considerable increase in production. There is also a real possibility of shifting production from ammonium nitrate to UAN, given the fact that the additional equipment required for producing UAN would not involve any major investment.

(25) Should the measures be repealed, the Community market might become more attractive for Polish producers than the North American market. As a matter of fact, the investigation showed that, during the IP, UAN prices on the North American market were slightly lower than prices on the Community market. Moreover, this latter market is considered more attractive by Polish exporting producers due to its geographical proximity, which entails cheaper transport costs. Thus, for the same selling price charged on the North American market, Polish exporting producers could achieve a higher margin on the Community market. Indeed, if the same or a slightly lower selling price were to be charged to Community customers, such a price would still be dumped, despite the lower transport costs. Moreover, in view of the cooperating producer's low capacity utilisation rate, it has every economic interest in selling at even lower prices as long as its variable costs are covered and as long as there is no risk of endangering the prices charged to the US. It should be recalled that the Community market used to be Poland's major export market for UAN before the imposition of anti-dumping duties. Moreover, even when measures were in force, in particular during 1996 when the Community market price was above the minimum import price imposed by the measures, approximately 50 % of Polish production was exported to the Community.

(26) In addition, following the imposition of anti-dumping measures on imports of UAN originating in Algeria, Belarus, Lithuania, Russia and Ukraine, there will be greater opportunities for other producers/exporters to regain market share.

(27) The cooperating exporting producer argued, on the basis of sales projections, that in the future it would no longer be in a position to export UAN to the Community market. The reasons for this were (i) the expected significant increase in its domestic sales of ammonium nitrate, limiting the availability of ammonium nitrate for the production of UAN, and (ii) the growing domestic market for UAN.

(28) Even though the investigation confirmed that domestic sales of ammonium nitrate had indeed significantly increased between 1998 and 1999, this increase started from relatively low levels because domestic consumption decreased by 15 % between 1996 and 1998. It is expected that these domestic sales will remain at the 1999 level or increase only slightly in the future. This has even been confirmed by the Polish cooperating producer's own sales figures for the first eight months of the year 2000. It seems, therefore, that the large increase in domestic sales between 1998 and 1999 should be considered exceptional.

(29) As far as the development of domestic sales of UAN is concerned, it is clear from the Polish cooperating producer's sales figures for the first eight months of the year 2000 in fact increased far less than forecast.

(30) Furthermore, it has been found that a considerable volume of UAN was again exported to the Community in the year 2000. Indeed, in the period from January to October 2000, total exports

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of UAN from Poland to the Community amounted to 5 % of Community consumption in the IP.

(b) *Non-cooperating producer*

(31) The second Polish exporting producer was found to have exported a significant volume to the Community in 1996 while the Community market price was temporarily above the minimum import price. During the previous investigation, it was found that this producer had a significant production capacity and there is no indication that this has changed. From this it can be concluded that the company is potentially a significant exporter to the Community should anti-dumping measures be repealed. In the absence of cooperation from this producer, it was concluded that its pricing behaviour concerning any future exports to the Community would not significantly differ from that adopted by the other producer and from its own behaviour during the original investigation.

(c) *Conclusion on potential exports to the Community*

(32) Given the above it can be concluded that the Polish exporting producers clearly have the capacity to export large quantities of UAN at dumped prices.

(33) The Community market used to be Poland's major export market for UAN. Even when measures were in force, in particular during 1996 when the Community market price was above the minimum import price, approximately 50 % of production was exported to the Community. Should the measures be repealed, this market is likely to become once again an attractive outlet for Polish producers.

4. **Conclusion on the likelihood of a recurrence of dumping**

(34) Polish exporting producers have the capacity to increase significantly their production volume of UAN because of their substantial unused production capacity.

(35) Any future increase in domestic consumption will not be sufficient to absorb these possible additional volumes, which will therefore most likely be exported. This conclusion is reinforced by the fact that, during the period from the beginning of 1995 until the end of the year 1998, Polish producers exported in general a high percentage of their production (more than 80 % on average).

(36) In the event of the measures being repealed, it is likely that most Polish exports of UAN would be directed to the Community market due to its geographical proximity and consequent cheaper transport costs. In addition, the imposition of anti-dumping measures on imports of UAN originating in five other third countries might provide a further incentive to increase exports to the Community, all the more so because the Community market used to be Poland's major export market for UAN before the imposition of anti-dumping duties.

(37) The Polish exporting producer's current apparent dumping practices on the North American market, the price level prevailing on the Polish market and the price level prevailing on the Community market indicate that, should Polish exports resume, there is a strong likelihood that imports in the Community would also be dumped.

(38) It is therefore concluded that there is a likelihood of recurrence of dumping, should the measures be repealed.

F. **DEFINITION OF THE COMMUNITY INDUSTRY**

(39) The Community producers which replied to the questionnaire represented more than 85 % of the Community production of UAN during the IP and therefore constitute the Community

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industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

## G. THE SITUATION OF THE COMMUNITY MARKET

### 1. Community consumption

(40) 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 remaining Community producers, the information provided by the cooperating Polish exporting producer and Eurostat figures. Volumes have been, where appropriate, adapted so as to correspond to UAN solutions with a nitrogen content of 32 %.

(41) On this basis, Community consumption decreased between 1995 and 1997, from 3 155 000 to 2 882 000 tonnes. Afterwards, it significantly increased and reached the level of 3 413 000 tonnes during the IP. This increase was especially marked between 1998 and the IP (+15 %). Over the whole period under review, the Community consumption increased by 8,2 %.

### 2. Evolution of imports

(a) *Import volumes*

(42) Total imports of UAN in the Community followed a downward trend during the first three years of the period under review, from 1 565 000 tonnes in 1995 to 990 000 tonnes in 1997, and then increased to 1 482 000 tonnes during the IP. Over the whole period under review, total imports decreased by around 5 %.

(43) With respect to the volume of the Polish imports, it drastically decreased over the period under review, in particular as from 1997, from 360 000 tonnes in 1995 to nil during the IP. The investigation established that the trend of the Polish imports was the result of the combination of the anti-dumping measures imposed at the end of 1994 and of the evolution of the average Community market price of UAN, as explained below. It should be recalled that before the imposition of the measures, the Polish imports of UAN reached the level of around 520 000 tonnes in 1992 and around 405 000 tonnes in 1993, representing at that time around 50 % of all imports.

(44) In this context, as confirmed by Regulation (EC) No 1995/2000, certain third countries have benefited from the imposition of anti-dumping duties on Polish imports. Their export volume to the Community increased from 869 000 tonnes in 1995 to 1 393 000 tonnes during the IP.

(45) As to the other third countries' import volumes, they strongly decreased over the period under review, representing around 21 % of total imports in 1995, compared to 6 % during the IP.

(b) *Price evolution of the imports*

(46) After the imposition of anti-dumping measures against imports of UAN originating in Poland and Bulgaria, prices recovered until 1996. Thereafter, imports from the five countries concerned by Regulation (EC) No 1995/2000 exerted a downward price pressure on the Community market. In order to face this situation the Community industry had no choice but follow the decreasing prices in order to keep its market share. The Polish exporting producers were not in a position to follow the Community market price as soon as it fell below the level of the minimum import price to which their imports had been subject since the imposition of the anti-dumping measures. As a consequence, Polish producers have withdrawn from the Community market since 1998.

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

(a) *Production*

(47) The Community industry's production of UAN increased by 10,4 % between 1995 and the IP, i.e. from 1 484 000 tonnes to 1 639 000 tonnes. The most significant increase took place between 1996 and 1997, after the introduction of anti-dumping measures on imports of UAN originating in Poland and Bulgaria.

(b) *Capacity and capacity utilisation rates*

(48) The total production capacity of the Community industry was relatively stable over the period under review. Capacity utilisation increased from 38 % in 1995 to 43 % in 1997 and subsequently fell back to 41 % during the IP.

(49) It should however be noted that the production capacity installed can be used for the production of different fertilisers which can be sold either individually or mixed together, as is the case for the production of UAN. The absolute level of capacity utilisation rate as well as its development is accordingly also affected by the development of other fertilisers.

(c) *Sales in the Community*

(50) During the period under review, the sales volume of the Community industry followed an increasing trend, which was however temporarily interrupted between 1997 and 1998. This trend should be analysed in the light of the overall market development. As a matter of fact, the decrease of the Community industry's sales volume between 1997 and 1998 took place when the overall market was stable, thus resulting in loss of market shares. The increasing volume between 1998 and the IP, however, followed the market trend. Despite the increasing trend of the sales volume, the position of the Community industry in the market has overall deteriorated since 1997. The Community industry was not able to take advantage of the increase in consumption because of the pressure of the five countries concerned by Regulation (EC) No 1995/2000.

(d) *Stocks*

(51) The level of stocks is not considered to be a valid injury indicator owing to the seasonal nature of the sales and the fact that UAN is partly stored by the producers themselves and partly by the cooperatives of farmers, i.e. the users of the product into consideration.

(e) *Market share*

(52) After a gain of 15 percentage points between 1995 and 1997, from 45,8 % to 60,7 %, when the measures were taking effect, the Community industry's market share fell, between 1997 and the IP, by 8,4 percentage points.

(f) *Sales prices of the Community industry*

(53) The Community producers' average net sales price decreased from EUR 111,3 in 1995 to EUR 78,3 during the IP. As explained in recital (46), the fall was particularly marked between 1996 and the IP, i. e. – 32,2 %.

(g) *Profitability*

(54) The weighted average profitability of the Community industry deteriorated by 15,2 percentage points between 1995 and the IP from + 4,9 % to − 10,3 %. After having reached a peak in 1996 (+ 6,2 %), it deteriorated by 16,5 percentage points between that year and the IP. This evolution should be seen in the light of the price development experienced by the Community industry

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during the same period. The investigation showed that the Community industry's sales price increased between 1995 and 1996, whilst it afterwards started to decrease mainly because of the price pressure exerted by imports from the five countries concerned by Regulation (EC) No 1995/2000. It should be recalled that, during the IP of the initial investigation (i.e. April 1992 to March 1993), the Community industry incurred losses of more than 5 %.

(55) The return on investments broadly followed the profitability curve during the period under review. The decreasing trend was even more marked due to the joint effect of the decreasing profitability and increasing net investments resulting from new acquisitions, as described below. It should be noted that both direct investments and a portion of investments indirectly related to the production of the product concerned have been considered.

(h) *Cash flow*

(56) The cash flow generated by the Community industry in relation to sales of UAN also followed the profitability curve.

(i) *Ability to raise capital*

(57) Due to the structure of the complainant companies, i.e. the fact that the fertiliser producers are a part of large chemical groups also dealing with other products, it was not possible to establish the ability to raise capital for the product under consideration only, and it was therefore considered as not being a meaningful indicator to measure any injury.

(j) *Employment and wages*

(58) Employment in the Community industry, while increasing between 1995 and 1996, from 330 to 339 employees, decreased thereafter and reached the level of 322 employees in the IP, a decrease of 5 %.

(59) With respect to overall wages, they followed a similar decline as compared to the decrease of the number of persons employed.

(k) *Upstream investment*

(60) The most important investments of the Community industry during the period under review took place during the years 1996 to 1998, and were related to the production facilities for urea and nitric acid, which are both raw materials used for the production of UAN solutions, but are also used for other purposes such as the production of solid ammonium nitrate and solid urea, for which a more positive outlook existed as compared to UAN. Direct investments related only to the last step of the production process, i.e. the mixing of ammonium nitrate and urea, represent a minor fraction of the figures shown above. Those direct investments remained at a relatively stable level during the period under review.

4. **Conclusion on the analysis of the situation of the Community market**

(61) The introduction of the minimum import price on Polish imports had in a first stage a positive impact on the Community industry, which could recover from its weakened economic situation. However, starting from the year 1997, and as confirmed by Regulation (EC) No 1995/2000, Algeria, Belarus, Lithuania, Russia and Ukraine largely contributed to a general price depression on the Community market by decreasing their average sales price by around 35 % between 1996 and 1997. By doing so, they were able to expand their export volume to the Community, were rapidly in a position to take over the Polish market shares,

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and consequently caused a significant deterioration of the economic situation of the Community industry.

## H. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY

(62) In order to assess the likely effect of the expiry of the measures in force, the following elements were considered:

(a) As explained under recitals 23 to 31:

— there are clear indications that the Polish producers have the potential to raise their production and export volumes,

— should the measures lapse, it is likely that these additional volumes will be shipped to the Community market,

— on the basis of the export prices established in respect of exports to North America, it is likely that, in the absence of measures, the Polish exporting producers would adopt a policy of dumped prices. These low prices, which would be charged also in order to regain their lost market shares, are likely to further injure the Community industry. The possibility for the Polish exporting producers to lower their prices is confirmed by their export price behaviour on third countries markets, namely North America.

(b) Such a price behaviour of Polish exporting producers, coupled with their ability to deliver significant quantities of UAN, would in all likelihood have a general price-depressing impact on what is a very price-sensitive commodity market. This in turn would lead to a recurrence of injury in terms of decreasing sales prices of the Community industry, its sales volumes and market shares as well as the consequent impact in terms of profitability. In this context, it is recalled that imports from Algeria, Belarus, Lithuania, Russia and Ukraine recently followed the very same pricing and volume patterns and these imports had similar effects on the Community industry as those outlined above.

(c) The Community industry is still in a difficult situation having regard in particular to its profitability. Indeed, although the situation of the Community industry, following the imposition of the measures under consideration, markedly improved in the first two years of application of the measures, it deteriorated again, in particular as from 1997, due to the injurious dumping from other countries' imports, as established in Regulation (EC) No 1995/2000. In this regard, should the measures against Poland be repealed, not only would the situation of the Community industry again be put at a risk, but also the benefit which the Community industry should derive from the measures imposed against these other countries could be weakened or even nullified.

(63) On the basis of the above, it is concluded that, should the measures be repealed, there is a likelihood of recurrence of injury.

## I. COMMUNITY INTEREST

### 1. Preliminary remark

(64) In accordance with Article 21 of the basic Regulation, it was examined whether a prolongation of the existing 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/traders as well as the users of the product under consideration.

(65) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of

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the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, would allow the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(66) On this basis it was examined whether, despite the conclusions on the likelihood of a recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. **Interest of the Community industry**

(67) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This was confirmed in particular by the positive development of its situation at a time when effective competition had been restored after the imposition of anti-dumping measures on imports originating in Poland and Bulgaria and by the industry's investment in state of the art production capacity. These positive effects however lasted only for a short period since, as from 1997, dumped imports originating in certain third countries, other than Poland caused a strong price pressure on the Community market resulting in a new degradation of the economic situation of the Community industry. This degradation was such that the Community industry had to restructure its activity and close down significant nitrate capacity during the year 2000, thus reducing jobs.

(68) It can reasonably be expected that the Community industry will benefit from the measures imposed by Regulation (EC) No 1995/2000 provided that no other source of injurious dumping would undermine them. As outlined above, since there is a likelihood of a recurrence of injurious dumping from Poland, it would be in the interest of the Community industry to maintain the anti-dumping measures on imports of UAN originating in Poland

3. **Interest of unrelated importers/traders**

(69) The Commission sent out questionnaires to 20 unrelated importers/traders and to one association of importers. Nine answers were received including that from the association.

(70) The investigation established that none of these importers/traders had imported any UAN from Poland during the IP. They claimed this was due to the fact that, during this period, the average Community sales price for UAN was below the minimum import price applicable to imports of Polish UAN. It should, however, be noted that the anti-dumping measures imposed in 1994 on the imports of UAN originating in Poland had in fact no significant impact on importers/traders. As shown by both the current and the previous investigations, firstly, importers/traders do in general not only deal with UAN but also with other fertilisers and, secondly, UAN was available from numerous different countries of origin. This is due to the characteristics of the product under consideration, which is, as explained above, a commodity product and identical whatever the country of origin.

4. **Interest of users**

(71) The users of the product under consideration are farmers. The Commission sent out questionnaires to European associations of users. No replies were received.

(72) It is to be noted that fertilisers represent a small part of total production costs of farmers, as set out in Regulation (EC) No 1995/2000. Moreover, the lack of cooperation in itself appears to confirm that this sector did not suffer any substantial negative effect on its economic situation as a result of the measures currently in force.

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(73) In conclusion, it is unlikely that the possible impact on farmers would offset the positive effect on the Community industry of the measures against recurrent injurious dumping.

5. **Conclusion on Community interest**

(74) Given the above reasons, it is concluded that there are no compelling reasons against the prolongation of the anti-dumping measures.

## J. FORM OF THE MEASURES

(75) As stated in the notice of initiation, the interim review was initiated by the Commission in order to allow a possible adaptation of the form of measures for Poland, taking into account the treatment of exports of UAN from certain third countries to the Community which were then subject to another anti-dumping proceeding.

(76) Regulation (EC) No 1995/2000 concluded that it was appropriate to impose definitive duties in the form of a specific amount per tonne. The basis for imposing such a form of measures was 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.

(77) Like the producers in those other cases, the Polish UAN producers are integrated, producing a variety of different fertilisers. In addition, different fertilisers are sold to a considerable degree via identical distributors. This opens possibilities through which prices for different products can be compensated without this being easy to detect for customs authorities. For these reasons, it is considered that the form of measures applicable to imports of UAN originating in Poland should be changed to a specific amount per tonne, in line with the measures imposed on other countries by virtue of Regulation (EC) No 1995/2000.

(78) One Polish exporting producer contested the proposed change of the form of measures arguing that there was no legal basis for this change and that the minimum import price was effective in restoring fair conditions of competition on the Community market.

(79) In this respect it should be recalled that the interim review regarding the form of the measures has been initiated *ex officio* by the Commission, after consultation of the Advisory Committee, pursuant to Article 11(3) of the basic Regulation. As explained above, the Commission initiated the review in order to allow for the possibility of changing the form of the measures applicable to Poland to take account of any measures subsequently imposed on other countries concerning the same product.

(80) In addition to the possibility of compensation referred to in recital 77, the investigation showed that the minimum import price proved ineffective, as the product concerned may be subject to price fluctuations. Depending on the average Community market price, the minimum import price could either be inefficient or have the effect of excluding Polish exports from the Community market. The imposition of anti-dumping duties in the form of a specific duty in this instance, should therefore ensure that the measures are both effective and efficient in eliminating the effects of injurious dumping. Moreover, in other recent fertilisers proceedings it was found that the most appropriate form of measures for this kind of product is a specific amount per tonne.

(81) The amount of duty in EUR per tonne, as established by the previous investigation, is given below:

▼B

| | *Amount of duty (EUR per tonne)* |
|---|---|
| Zaklady Azotowe Pulawy SA | 19 |
| All other compagnies | 22, |

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of urea ammonium nitrate solution originating in Poland and falling within CN code 3102 80 00.

▼M1

2. The amount of the applicable duty per tonne of product 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 | Zaklady Azotowe Pulawy SA<br>Al. Tysiaclecia P.P. 13,<br>24-110 Pulawy<br>Poland | 0 | 8795 |
| | Other companies | 22 | 8900 |

▼B

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.

*Article 2*

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

*Article 3*

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

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

[1] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2787/2000 (OJ L 330, 27.12.2000, p. 1).