# COUNCIL REGULATION (EC) No 969/2000

## of 8 May 2000

## imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia and Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] and in particular Articles 9 and 11 thereof,

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

Whereas:

### 1. PREVIOUS INVESTIGATIONS

(1) By Regulation (EEC) No 3068/92 [2], the Council imposed definitive anti-dumping duties on imports of potassium chloride (hereinafter referred to as 'potash' or the 'product concerned') originating in Belarus, Russia and Ukraine (hereinafter referred to as the 'countries concerned'). The duties were equal to the difference between a set minimum price and the net, free-at-Community-frontier prices before customs clearance.

(2) By Regulation (EC) No 643/94 [3], the Council amended the abovementioned duties. Combined measures in the form of a fixed amount per tonne of potash or the difference between a set minimum price and the net, free-at-Community-frontier price per tonne before customs clearance, whichever was higher, were imposed. This type of measure was found to be warranted because circumvention of the original duties had been taking place. It should also be mentioned that the review carried out in 1994 covered both dumping and injury, as well as Community interest.

(3) By Regulation (EC) No 449/98 [4], the Council again amended the abovementioned measures. This review was initiated following a request by the International Potash Company (IPC), an exporter of Russian and Belarusian potash, who claimed, among other issues, that the accession of Austria, Finland and Sweden had resulted in a change in the circumstances on the basis of which the measures in force had been established. The form of the combined measures was maintained but the level of the measures was adapted in accordance with the findings of that investigation. It should also be mentioned that the review concluded in 1998 was limited to the examination of dumping and Community interest.

### 2. PRESENT INVESTIGATION

(4) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of potash originating in the countries concerned [5], the Commission received a request to review these measures pursuant to Article 11(2) of Regulation (EC) No 384/96, hereinafter referred to as the 'basic Regulation'.

(5) The request was lodged on 23 December 1998 by the European Association of Potash Producers (hereinafter the 'applicant') on behalf of producers, whose collective output of potash constitutes about 99 % of the Community production of this product, i.e. a major proportion of the total Community production pursuant to Articles 4(1) and 5(4) of the basic Regulation.

(6) The request was based on the grounds that the expiry of the measures would result in the continuation or recurrence of dumping and injury. Indeed, the applicant alleged that potash from the countries concerned was still being sold at dumped prices for inward processing, a relief regime not subject to anti-dumping measures in the Community. Likewise, the applicant claimed that, in view of the extent of the past dumping and the fact that the relevant exporters were still selling the product concerned at very low prices in countries neighbouring the Community, it was very likely that dumping would recur if the anti-dumping measures were removed. This argument was reinforced by the evidence presented that showed that domestic consumption had fallen drastically in the countries concerned whilst production had increased significantly, leaving the exporters with a surplus product that risked being sold on the Community market at dumped prices. Finally, the applicant submitted that the likely recurrence of dumping would lead to price erosion and inevitably cause injury to a Community industry whose profit situation was still somewhat precarious.

(7) In view of the specific form of the anti-dumping duties imposed on imports of potassium chloride from the countries concerned, i.e. a combination of a minimum price and a fixed duty, the Commission also decided, on its own initiative, to initiate an interim review, pursuant to Article 11(3) of the basic Regulation, limited to the form of the measures.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).
[2] OJ L 308, 24.10.1992, p. 41.
[3] OJ L 80, 24.3.1994, p. 1.
[4] OJ L 58, 27.2.1998, p. 15.
[5] OJ C 296, 24.9.1998, p. 3.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed, the Commission initiated an expiry review and an interim review (limited to the form of the duty) through the publication of a notice (hereinafter referred to as the 'notice of initiation') [1] pursuant to Articles 11(2) and 11(3) of the basic Regulation.

2.1. PERIOD OF INVESTIGATION

(9) The investigation on continuation or recurrence of dumping covered the period from 1 January to 31 December 1998 (hereinafter referred to as the 'IP' or the 'investigation period'). The examination of continuation or recurrence of injury covered the period from 1 January 1994 up to the end of the IP (hereinafter referred to as the 'period considered'). For the purposes of the examination of recurrence of injury, forecasts for years 1999 and 2000 were also taken into consideration.

2.2. PARTIES CONCERNED BY THE INVESTIGATION

(10) The applicant Community producers, the exporters and producers in the exporting countries and the importers/users as well as their representative associations known to be concerned and the representatives of the exporting countries were officially advised of the initiation of the review. Questionnaires were sent to all these parties and to those who made themselves known within the time limit set in the notice of initiation. In addition, the producers in Canada, which was chosen as the analogue country, were contacted and received questionnaires. The parties directly concerned were also given the opportunity to make their views known in writing and to request a hearing.

(11) All applicant Community producers replied to the questionnaire. Producers in Belarus and Russia, namely, Production Amalgamation 'Belaruskali' (Soligorsk, Minsk region, Belarus), JSC 'Silvinit' (Solikamsk, Perm region, Russia) and JSC 'Uralkali' (Berezniki, Perm region, Russia) cooperated with the investigation via their common exporter IPC (Moscow, Russia). Ferchimex (Antwerp, Belgium) and Belarus (Vienna, Austria), related importers of IPC, replied as well. No cooperation was received from any Ukrainian exporting producer.

(12) Seven unrelated importers replied to the questionnaire and made their views known in writing. The importers of potash are in most cases also users of the product. No replies were obtained from the non-importing users of the product.

(13) All information deemed necessary to determine whether there was a likelihood of a continuation or recurrence of dumping and injury and whether the continued imposition of the measures was in the Community interest was sought and verified. Investigations were carried out at the premises of the following companies:

(a) *Applicant Community producers:*

Cleveland Potash Limited, Saltburn, United Kingdom,
Comercial de Potasas, SA [2], Madrid, Spain,
Kali and Salz GmbH, Kassel, Germany,
Société commerciale des potasses et de l'azote SA [3], Mulhouse, France, hereinafter referred to as 'SCPA';

(b) *Producers in the analogue country:*

Agrium Inc., Calgary,
IMC Global Inc., Regina,
Potash Corporation of Saskatchewan (PCS), Saskatoon;

(c) *Unrelated importers into the Community:*

Fertiberia SA, Madrid, Spain (also a user of potash).

3. **PRODUCT CONCERNED AND LIKE PRODUCT**

3.1. DESCRIPTION OF THE PRODUCT CONCERNED

(14) The product concerned is potassium chloride (potash, KC1) and is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphorus, potassium). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide ($K_2O$) on the dry anhydrous product.

(15) Potash is generally commercialised in either a standard/powder form (standard potash) or in 'other than standard' form that includes but is not limited to a granular form (granular potash). The product is generally classified into three basic categories, based on the $K_2O$ content, namely:

— potassium content not exceeding 40 % $K_2O$ — falling under CN code 3104 20 10,

— potassium content exceeding 40 % $K_2O$ but less than or equal to 62 % — falling under CN code 3104 20 50,

— potassium content over 62 % $K_2O$ — falling under CN code 3104 20 90.

(16) Since the anti-dumping measures in force also consist of a variable duty, the Regulation subject to review specified different levels of anti-dumping duties for standard potash, on the one hand, and the remaining forms of potash including granular potash, on the other.

[1] OJ C 80, 23.3.1999, p. 9.

[2] Subsidiary and exclusive trader of the production of two Spanish mines: Suria K, SA (until April 1997) and Potasas de Llobregat, SA.

[3] Subsidiary and exclusive trader of the production of 'Mines de potasse d'Alsace'.

(17) It should be recalled that in the last review investigation, it was found that imports of certain special mixtures or blends with an unusually high content of potash, which do not fall under the CN codes for potash indicated above, should be considered a product concerned. This conclusion was reached as such mixtures and blends shared the same basic physical and chemical characteristics and have the same uses as the basic categories mentioned above. As the present investigation has not brought to light any consideration indicating that the approach taken should not be continued, and in order to ensure a consistent application of the anti-dumping measures, as well as to avoid erroneous classification, it has been considered necessary, in this Regulation, to clarify the minimum content of $K_2O$ of such mixtures and blends as being 35 % or more, by weight, of the dry anhydrous product and falling under the 'other than standard' form of potash.

3.2. LIKE PRODUCT

(18) As in the previous investigations, it was established that, since there were no differences in the physical and chemical properties of the different types and qualities of potash, potash produced in Canada, which was chosen as analogue country (see Chapter 4.2) and sold on the North American market, is a like product to that exported to the Community from the countries concerned, in the sense of Article 1(4) of the basic Regulation. In addition, potash exported from the countries concerned and potash produced by the Community producers were also like products.

(19) IPC requested the exclusion of standard potash with a $K_2O$ content higher than 62 %, which, it was claimed, was only used in pharmaceutical applications, had different prices and was delivered packed (as opposed to the bulk deliveries of potash used as a fertiliser). However, the product in question had the same basic physical characteristics and basic chemical composition as the product concerned. The fact that potassium chloride is generally used as a fertiliser does not exclude products destined for industrial or pharmaceutical use or products packed in a different way, from the scope of the like product definition. It was therefore decided that this type of potash is one single product with the other types of potash.

## 4. **LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING**

4.1. PRELIMINARY REMARKS

(20) In accordance with 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 lead to a continuation or recurrence of injurious dumping.

(21) In this respect, the volumes exported to the Community during the IP were examined. The volume of imports from Russia represented 4,2 % of consumption but was largely imported under the inward processing regime. In line with the consistent practice of the institutions these imports should be taken into account for the purposes of establishing whether dumping is taking place and thus the Russian import volume is considered sufficient to provide a representative picture of whether dumping is taking place at present and whether any such dumping will continue should measures be removed. The volume of imports from Belarus could also be considered representative as they reached 1,2 % of Community consumption. In these circumstances, it was not necessary to examine whether there was a likelihood of recurrence of dumping due to imports originating in these two countries should measures be removed. As regards Ukraine there were no exports during the IP and therefore the investigation centred on whether there was a likelihood of recurrence of dumping should measures be removed.

4.2. ANALOGUE COUNTRY

(22) In order to establish whether dumping would continue or recur, normal value had to be based on information obtained in an appropriate market-economy third country in accordance with Article 2(7) of the basic Regulation. In the notice of initiation, Canada was suggested as an appropriate analogue country.

(23) No party objected to the use of Canada as an analogue country. Both IPC and the European Fertiliser Import Association (EFIA) agreed to the choice of Canada as analogue country provided that the mines located in the province of Saskatchewan rather than New Brunswick were used for the determination of normal value. IPC also wanted the Patience Lake mine in Saskatchewan excluded from the normal value determination.

(24) Both parties argued that the mines for which exclusion was requested differ in terms of size, geological deposit conditions and mining and production methods from those prevailing in Belarus, Russia and Ukraine, which are very similar to the Saskatchewan mines. Furthermore, it was argued that the New Brunswick mine is situated much closer to its customers than the ports of loading used for potash exports for Belarus and Russia, rendering transport costs, in particular, incomparable.

(25) The investigation confirmed that Canada should be used as an analogue country because:

(a) Canada was the main producer and exporter of potash world-wide, ahead of Belarus, Russia and Ukraine;

(b) the North American domestic market for the product concerned was subject to normal conditions of competition;

(c) the manufacturing process and access to raw materials were, to a large extent, similar in Canada and in the countries concerned;

(d) Canada had been used in the previous investigations.

(26) With regard to the arguments made by IPC and EFIA concerning the exclusion of certain mines the following points can be made:

(a) As potash is effectively a commodity and as the normal value determination is based on prices from virtually all of the mines operating on the open and competitive North American market, any difference in mining conditions or any of the other factors cited, in one particular mine or region, does not have any material affect on the normal value;

(b) The point raised by IPC concerning the differences in the distances between the New Brunswick mine and its domestic markets in Canada and the Belarusian and Russian mines and their export ports is not relevant as normal value and export price are compared, in accordance with Article 2(10) of the basic Regulation, at the same level, i.e. ex-mine. Moreover, the New Brunswick mine in question represents only a small proportion of the sales taken into account for the determination of normal value so that an effect of distances, if any, would be diluted by the volume of the total sales taken into consideration (see recital 36).

(27) Consequently, calculations were based on all complete questionnaire replies received from all three Canadian companies. These data, relating to mines located in New Brunswick and Saskatchewan, were fully verified at the companies' premises in Canada.

4.3. RUSSIA AND BELARUS

(28) In examining whether there is a likelihood of continuation of dumping from Russia and Belarus if measures were removed it is necessary to verify whether dumping existed during the IP and whether any such dumping is likely to continue.

4.3.1. **Normal value**

(29) Normal value was calculated on the basis of the data of all the cooperating Canadian companies. In this respect, the total sales of potash of the cooperating companies on the Canadian market were considered to be representative.

(30) It was finally examined whether the relevant sales could be considered as having been made in the ordinary course of trade by looking at the proportion of profitable sales of the grade in question.

(31) As the volume of standard potash sold at a net sales price equal to or above the cost of production (profitable sales) represented more than 80 % of the total sales volume of that grade and since the weighted average price was higher than the weighted average cost of production, normal value was based on the actual price on the North American market for Russia, calculated as a weighted average of the prices of all sales of standard potash made by each company during the investigation period, whether profitable or not.

4.3.2. **Export price**

(32) IPC was the only exporter that cooperated with the investigation. Export volumes reported by IPC do virtually correspond to the Eurostat figures, complemented as explained under point 6.2.1. Therefore, for both Belarus and Russia, export prices were assessed on the basis of the information provided by IPC.

(33) IPC sold to the Community market partly via two related importers, Ferchimex, based in Belgium and Belarus, based in Austria, and partly directly to independent customers.

(34) In all cases where exports of potash were made to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable. In cases where export sales were made to a related party, the export price was constructed pursuant to Article 2(9) of the basic Regulation, i.e. on the basis of the price at which the imported products were first resold to an independent buyer. In such cases, adjustments were made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price at the Community frontier level. The profit margin of 5 % applied in the previous investigation was, in the absence of any other information, considered reasonable given the functions performed by the related importers.

(35) During the investigation period, virtually all of the potash exported to the Community by IPC entered the Community market in the framework of the inward processing relief (IPR) regime, where it competed with potash produced by the Community industry.

4.3.3. **Comparison**

(36) As potash is a bulk product with transport costs representing a large proportion of the selling price, and in view of the significant distance between the Belarusian and Russian mines and the nearest port or frontier, it was decided that the comparison should be carried out on an ex-mine basis, as in the previous investigation.

(37) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences affecting price comparability, in accordance with Article 2(10) of the basic Regulation.

(i) *Adjustments to normal value*

(38) IPC made a number of comments regarding differences in quality and mining conditions between Belarus and Russia and the Community and Canada. However, no claims for adjustment were made and none of the alleged differences was quantified. Furthermore, most of the elements mentioned were already treated in the previous investigation, where it was concluded that any adjustment for natural comparative advantages would have been to the disadvantage of the Belarusian and Russian mines. As the essential circumstances have not materially changed since the previous investigation, and for the abovementioned reasons, there was no need for adjustments to normal value for physical differences or natural comparative advantages. An adjustment for differences in credit costs has been granted where warranted.

(ii) *Adjustments to the export price*

(39) An adjustment to the export price was made for transport costs. The methodology used to determine the amount of the adjustment was the same as in the previous investigation, i.e. for transport within Belarus and Russia data relating to transport costs in Canada were taken, while transport costs from the border of the producing country to the Community border, where applicable, were determined on the basis of the costs reported by IPC.

(40) IPC argued that the amounts for transport costs reported in its reply to the questionnaire were wrongly deducted. There was some contradiction between the delivery terms and the transport costs as reported by IPC. However, in the absence of any evidence provided by IPC, it was impossible to find out whether the delivery terms or the transport expenses were correctly reported. In any event, even if the most favourable approach for IPC was taken, this would not have altered the findings concerning the existence of dumping. Furthermore, it should be recalled that in an expiry review it is not necessary to calculate a precise dumping margin.

(41) An adjustment was also made for credit costs on the basis of the information reported by IPC.

4.3.4. **Dumping margin**

(42) A dumping margin was determined respectively for Belarus, Russia and Ukraine. The weighted average normal value was compared to the weighted average export price to the Community.

(i) *Belarus*

(43) Expressed as a percentage of the price 'cif-Community-border', there was still significant dumping with regard to imports originating from Belarus, although at a somewhat lower level than found in the previous investigation.

(ii) *Russia*

(44) Expressed as a percentage of the price 'cif-Community-border', the dumping margin found is significantly higher than the one found in the previous investigation.

4.3.5. **Conclusion**

(45) With regard to imports from Belarus and Russia, it can therefore be concluded that there has been a continuation of significant dumping. No reasons have been found as to why dumping would stop should the anti-dumping measures be repealed.

4.4. UKRAINE

(46) As in the previous investigation, no cooperation was received from Ukraine. Eurostat figures did not show any imports from this country during the investigation period, although there had been imports in preceding years. On this basis, it was necessary to examine whether dumping would recur should measures be repealed. No cooperation was received from any Ukrainian producer. Therefore, and in accordance with Article 18 of the basic Regulation, findings had to be based on facts available. In this context, it should be noted that evidence suggests that potash mines are operated in Ukraine. This evidence suggests that they have a significantly lower capacity than the ones in Russia and Belarus. However, when comparing the capacity of these Ukrainian mines with Community consumption the potential for exports is still important. As to the level of prices of possible Ukrainian imports, it should be noted that there is no shortage of supply of potash on the Community market. Thus, if a new player wishes to enter the Community market it can only do so at price levels undercutting those charged by the operators currently active on this market, which means that they would be dumped. It should also be noted that in the past imports from the Ukraine have been at prices similar to those then charged by Russia and Belarus.

4.4.1. **Conclusion**

(47) In view of the foregoing, and in the absence of any other evidence to the contrary, for exemple information on capacity utilisation, volumes and prices of exports to other third countries, it was concluded that there is a likelihood of a recurrence of dumped imports originating in the Ukraine should measures be repealed.

5. **DEFINITION OF THE COMMUNITY INDUSTRY**

(48) The investigation confirmed that the applicant Community producers represented 99 % of the Community production of potash and therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

## 6. ANALYSIS OF THE SITUATION OF THE COMMUNITY INDUSTRY AND OF THE COMMUNITY POTASH MARKET

(49) Firstly, it should be noted that the data relating to profitability and investments during the period considered were calculated on the basis of the data of three Community producers: Cleveland Potash Limited, Comercial de Potasas, SA and Kali und Salz GmbH. The fourth Community producer, SCPA, was partly excluded due to the exceptional condition of its mining subsidiary 'Mines de potasse d'Alsace'. The mine will be closed in a few years due to exhaustion of potash reserves, and it is no longer investing. Also the accounting system of the mine has been simplified in such a way that it is no longer possible to calculate either the production cost or the profitability of potash in a manner allowing for the aggregation of the data with other Community producers. However, on the basis of the information available, had SCPA been taken into account the profitability of the Community industry would have been notably lower and the investments would have shown an even more drastic downward trend.

(50) Secondly, it should be noted that during the most recent years imports from the countries concerned were almost exclusively under the IPR regime. In line with the consistent practice of the Community institutions, it was considered that these imports compete with the product concerned of the Community industry as they are processed in the Community by fertiliser manufacturers who buy some of the raw materials used in the production of complex fertilisers, which are also destined for export, from the Community industry. These imports were therefore taken into account in establishing Community consumption, market shares of the countries concerned and in the analysis of prices of potash sold by the exporters concerned.

### 6.1. CONSUMPTION ON THE COMMUNITY MARKET

(51) The total consumption of potash was calculated on the basis of the combined totals of:

(a) the sales volume of own-produced potash of the Community industry on the Community market;

(b) the sales volume of non-applicant Community producers on the Community market;

(c) imports into the Community of potash from the countries concerned;

(d) imports into the Community of potash from all other third countries.

(52) On this basis, consumption decreased from around 7 460 000 tonnes in 1994 to around 7 290 000 tonnes in the IP; i.e., a decrease of approximately 2,3 %. However, during the period considered the level of consumption fluctuated as shown in the table below:

*(in thousand tonnes)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Community consumption | 7 460 | 7 340 | 7 090 | 7 600 | 7 290 |

*Source:* Questionnaire replies of the Community industry, Eurostat, National Statistical Offices in Finland, Denmark and Belgium.

### 6.2. IMPORTS FROM THE COUNTRIES CONCERNED

#### 6.2.1. **Import volume**

(53) The volume of imports of potash originating in Russia decreased from 397 000 tonnes in 1994 to 305 000 tonnes during the IP, equivalent to a decrease of about 23 %. The volume of imports originating in Belarus decreased from 137 000 tonnes in 1994 to 91 000 tonnes in the IP, equivalent to a decrease of about 34 %. Ukraine exported only during the years 1994, 1995 and 1997, with a sharply declining trend. The overall imports from the countries concerned decreased by around 32 % during the period considered. The decrease was, however, not constant: total imports from the countries concerned decreased until 1996, reaching a low of 132 000 tonnes, after which they started soaring again, increasing by threefold up to the IP.

(54) The investigation has shown that the volume of imports as reported by IPC is higher than the data contained in Eurostat, as several Member States that have only one major importer did not report complete data for confidentiality reasons. Complementary information from those Member States was requested and received. On this basis it was found that the imports reported by IPC are not significantly different from the complete Eurostat data.

*(in thousand tonnes)*

| Imports | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Russia total | 397 | 175 | 122 | 190 | 305 |
| Belarus total | 137 | 113 | 11 | 51 | 91 |
| Ukraine | 49 | 15 | 0 | 1 | 0 |
| Total | 583 | 303 | 132 | 243 | 396 |

*Source:* Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

The tonnage imported under the IPR regime and their percentage of total Community imports of potash for each country were:

*(in thousand tonnes)*

| Imports | 1994 | 1995 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|
| Russia | 61 | 159 | 115 | 178 | 284 |
| *% of imports* | *15* | *91* | *94* | *93* | *93* |
| Belarus | 34 | 52 | 11 | 51 | 91 |
| *% of imports* | *25* | *46* | *100* | *100* | *100* |
| Ukraine | 35 | 15 | 0 | 1 | 0 |
| *% of imports* | *72* | *100* | *N/A* | *100* | *N/A* |
| Totals | 131 | 226 | 126 | 230 | 375 |
| *% of imports* | *22* | *75* | *95* | *95* | *95* |

(55) The above tables illustrate developments during the imposition of anti-dumping measures. While the share of imports under the IPR regime was only minor in 1994, during the IP practically all the imports occurred under the said regime. Imports under the IPR regime are controlled by the Member States' customs authorities as provided for in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1]. The present investigation has not brought to light any facts that would suggest that the regime could have been used to circumvent the measures. It should also be noted that goods imported under this regime are not liable to the anti-dumping duties under review, a factor explaining the increase occurring towards the end of the period considered.

### 6.2.2. **Market share**

(56) The market share of the imports from the countries concerned on the Community market decreased by 2,4 percentage points during the period considered. However, the decrease has not been constant. The market share decreased from its highest level of 7,8 % in 1994 to reach its lowest level in 1996, i.e. 1,9 %. After 1996 there was a constant increase, up to 5,4 % in the IP.

[1] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council (OJ L 119, 7.5.1999, p. 1).

| Market share of the imports concerned in % | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Belarus | 1,8 | 1,5 | 0,2 | 0,7 | 1,2 |
| Russia | 5,3 | 2,4 | 1,7 | 2,5 | 4,2 |
| Ukraine | 0,7 | 0,2 | 0 | 0 | 0 |
| Total | 7,8 | 4,1 | 1,9 | 3,2 | 5,4 |

*Source:* Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

### 6.2.3. **Price evolution and price behaviour**

#### 6.2.3.1. *Price evolution of the imports concerned*

(57) As to the evolution of prices of the imports subject to investigation over the period considered, trends were established using Eurostat figures as determined in recital 54.

The cif average sales prices from the countries concerned on the Community market developed in detail as follows:

*(in ECU/tonne)*

| Average cif prices of potash with 40 % < $K_2O$ ≤ 62 % | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Belarus | 67,5 | 86,5 | 88,3 | 94,1 | 100,1 |
| Russia | 83,1 | 71,7 | 74,4 | 79,4 | 85,8 |
| Ukraine | 83,6 | 89,9 | — | 88,0 | — |
| Average | 79,2 | 76,8 | 75,7 | 83,3 | 90,8 |

*Source:* Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

*(in ECU/tonne)*

| Average cif prices of potash with $K_2O$ > 62 % | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Russia | — | 89,9 | 93,8 | 96,7 | 101,5 |

*Source:* Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

(58) The average increase in the price of potash with 40 % < $K_2O$ ≤ 62 % from the countries concerned amounts to 14,6 % during the period considered. Whereas the Belarusian prices have increased significantly, overtaking the price of potash of Russian origin, the Russian prices have remained relatively low. No potash originating in Ukraine was imported in the IP.

(59) Potash with $K_2O$ > 62 % was only imported from Russia. The average price increased by 12,9 % from 89,9 ECU/tonne in 1995 to 101,5 ECU/tonne in the IP.

6.2.3.2. *Price behaviour*

(60) Anti-dumping duties have been in force for three years. During this time very few imports originating in the countries concerned were made for release into free circulation. Imports have mostly been limited to the IPR regime. IPC representatives claimed that they had to offer their product at lower prices than those of the Community industry due to the very nature of the IPR regime. This argument was studied but no clear evidence was found to support it.

(61) In the examination of price behaviour, prices declared by the exporters for each sale to independent customers and for each resale through their related importer were averaged during the IP for the two main grades of potash according to their origin: Belarus and Russia. These prices were net invoice prices, duty unpaid and equivalent to delivered prices because of the proximity of the clients to the ports of delivery. They were compared to the weighted averages of all Community producers' invoiced prices at Community level for the said two grades of potash.

(62) It was thus established that IPC's prices were lower than those of the Community industry by more than 10 % on average. More specifically, potash prices of Russian origin were lower by about 20 % and of Belarusian origin by 5 %.

6.3. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

(63) It should be noted that forecasts given by the Community industry for 1999 and 2000 were based on the assumption that the measures will be maintained.

6.3.1. **Production**

(64) The production of potash in the Community declined throughout the period considered with the exception of 1996 when a minor increase occurred. Production decreased from around 7 779 000 tonnes to around 7 026 000 tonnes for the following reasons: (1) the gradual exhaustion of ore in the French mine; (2) the closing down of some unprofitable mines in Germany and Spain; and (3) geological anomalies in the mine of one Community producer in 1997 and during the IP. For 1999 and 2000, the Community industry forecast an increase in production reaching the level of 1997 in 2000.

Figures for Community production of potash were as follows:

*(in thousand tonnes)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Production | 7 779 | 7 428 | 7 541 | 7 368 | 7 026 |

*Source:* Questionnaire replies of the Community industry.

6.3.2. **Production capacity**

(65) The production capacity of the Community industry decreased from around 10 000 000 tonnes in 1994 to around 9 300 000 tonnes in the IP. Only in 1996 was there a minor increase in production capacity compared to the previous year. In 1999 and 2000 the Community industry is expected to reduce its capacity even further to a level of around 8 500 000 tonnes in 2000 due to progressive exhaustion of ore in the French mine.

Figures for total production capacity of potash were as follows:

*(in thousand tonnes)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Capacity | 9 996 | 9 414 | 9 472 | 9 403 | 9 293 |

*Source:* Questionnaire replies of the Community industry.

### 6.3.3. **Capacity utilisation**

(66) The Community industry's capacity utilisation increased from 1994 to 1996 but began to decrease in 1997, primarily because the French producer was no longer able to produce potash up to its maximum ore-processing machine capacity as a result of decreasing ore resources. However, for 1999 and 2000 the Community industry expects to improve its capacity utilisation rate up to a level of 86 % in year 2000 along with the write-off of capacity in France.

In particular, the Community industry's capacity utilisation for potash developed as follows:

*(%)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Capacity utilisation | 77,8 | 78,9 | 79,6 | 78,4 | 75,6 |

*Source:* Questionnaire replies of the Community industry.

### 6.3.4. **Sales volume**

The Community industry's sales volume of own-produced potash to unrelated customers decreased from around 5 530 000 tonnes in 1994 to around 5 260 000 tonnes during the IP. The sales volume increased considerably between 1996 and 1997, but decreased again during the IP. However, by the end of 2000 the Community is expected to increase its sales volume to the 1997 level. In particular, the Community industry's sales volume on the Community market developed as follows:

*(in thousand tonnes)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Sales volume of the Community industry | 5 530 | 5 452 | 5 415 | 5 750 | 5 261 |

*Source:* Questionnaire replies of the Community industry.

### 6.3.5. **Market share**

(67) The Community industry's market share decreased from 74,1 % in 1994 to 72,2 % in the IP: a drop of about 2 percentage points. During this period its market share increased until 1996, after which it began to decrease to reach the level of the IP.

Specifically, the Community industry's market share developed as follows:

*(%)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Community industry's market share | 74,1 | 74,3 | 76,4 | 75,6 | 72,2 |

*Source:* Questionnaire replies of the Community industry, Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

### 6.3.6. **Price development**

(68) The investigation showed that the Community producers' average selling price of the most-sold grade of standard potash (40 % < $K_2O$ ≤ 62 %) rose from 90,1 ECU/tonne in 1994 to 104,2 ECU/tonne in the IP. This amounts to a rise of 15,6 %. However, the prices of potash with $K_2O$ > 62 % dropped from 137,7 ECU/tonne in 1994 to 122,0 ECU/tonne in the IP. This amounts to a decrease of 11,4 %. The decrease in price coincides with significant increase in sales volumes for the grade by the Community industry during the period considered. Larger orders brought economies of scale and therefore customers benefited from lower average prices.

(69) While there was a general upward trend in selling prices of standard potash with 40 % < $K_2O$ ≤ 62 % between 1994 and the IP, prices temporarily dropped in 1997 and then increased by 7,9 % in the IP. As for 1999 and 2000 the Community industry believes the positive trend in sales prices for potash with 40 % < $K_2O$ ≤ 62 % will continue and that there will be a small decrease in price for potash with $K_2O$ > 62 %.

The Community industry's average sales price for potash on the Community market developed as follows:

*(in ECU/tonne)*

| Average sales price | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Standard potash with 40 % < $K_2O$ ≤ 62 % | 90,1 | 96,8 | 101,6 | 96,6 | 104,2 |
| Standard potash with $K_2O$ > 62 % | 137,7 | 138,7 | 134,8 | 123,2 | 122,0 |

*Source:* Questionnaire replies of the Community industry.

### 6.3.7. **Profitability**

(70) For the purpose of the profitability analysis of the Community industry and following an established practice, the revenues from sales of certain by-products of potash production were also taken into account. It should also be recalled that the French producer, SCPA, was excluded from the Community industry's profitability calculation for the reasons set out in recital 49.

(71) The Community industry's profitability, expressed as a percentage of net sales, increased during the period considered from a weighted average loss of 1,0 % in 1994 to a profit of 3,3 % in the IP. It should be noted that profitability has improved steadily with the exception of 1997 when the profits declined to close to zero. During 1999 and 2000 the Community industry's profit level is expected to continue to fall short of a profit, which is considered normal for a risk-intensive mining business such as potash. The Community industry's profitability on the Community market for potash developed as follows:

*(%)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Profit rate | – 1,0 | – 0,5 | 1,5 | 0,1 | 3,3 |

*Source:* Questionnaire replies of the Community industry.

### 6.3.8. **Employment**

(72) Employment in the Community industry declined from 8 460 employees in 1994 to 6 936 employees in the IP, a drop of 18,0 %. The number of employees is forecast to drop even more during 1999 and 2000 due to the approaching closure of the French mine. The Community industry's employment situation developed as follows:

| Personnel employed in the production of potash | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Employees | 8 460 | 7 919 | 7 296 | 7 213 | 6 936 |

*Source:* Questionnaire replies of the Community industry.

6.3.9. **Stocks**

(73) The closing stocks of the Community producers for potash decreased from 560 000 tonnes in 1994 to 469 000 tonnes in the IP, a decrease of about 16 %. Closing stocks increased continuously from 1994 to 1996, but dropped significantly in 1997 to moderately increase again during the IP.

The closing stocks of the Community industry of potash developed as follows:

*(in thousand tonnes)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Closing stocks | 560 | 614 | 903 | 415 | 469 |

*Source:* Questionnaire replies of the Community industry.

6.3.10. **Investments**

(74) The Community industry's total investments decreased from around ECU 87,7 million in 1994 to around ECU 52,9 million in the IP, a decrease of about 40 %. Between 1994 and 1995 the investments increased due to a modernisation process of the mines of one major Community producer. In 1999 and 2000 the Community industry plans to start investing more again and the forecast level of investments in 2000 would exceed the 1996 figure. It should also be recalled that the French producer, SCPA, was excluded from the Community industry's assessment of investments for the reasons set out in recital 49. The Community industry's investments developed as follows:

*(in thousand ECU)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Investments | 87 722 | 113 809 | 84 201 | 63 908 | 52 882 |

*Source:* Questionnaire replies of the Community industry.

6.4. IMPORT VOLUMES AND IMPORT PRICES FROM OTHER THIRD COUNTRIES

(75) The import volume of potash from other third countries increased during the period considered from about 1 348 000 tonnes in 1994 to about 1 566 000 tonnes in the IP. This is equivalent to an increase of about 16,2 %. The major part of the increase is attributable to imports from Israel.

*(in thousand tonnes)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Imports from other third countries | 1 348 | 1 552 | 1 495 | 1 555 | 1 566 |

*Source:* Eurostat.

(76) The market share of imports from other third countries grew from 17,9 % in 1994 to 21,0 % in 1995 and remained relatively stable thereafter ending up with 21,4 % at the end of the IP.

(77) The average sales price for imports from other third countries has been included to show the price trend during the period considered. According to Eurostat, the average sales price for these imports increased steadily from 96,5 ECU/tonne in 1994 to 120,5 ECU/tonne in 1997. The price then dropped to 112,3 ECU/tonne in the IP. This corresponds to an increase of 16,4 % in the period considered.

In detail, the development was as follows:

*(in ECU/tonne)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Average import prices from other third countries | 96,5 | 101,8 | 104,3 | 120,5 | 112,3 |

*Source:* Eurostat.

6.5. EXPORT ACTIVITY OF THE COMMUNITY INDUSTRY

(78) In view of the fact that the production set out in point 6.3.1 is destined for sales both inside and outside the Community, the Community industry's exports of potash to third countries was also analysed. This analysis showed that exports amounted to 2 314 000 tonnes in 1994 compared to 1 658 000 tonnes in the IP. These exports had a downward trend except for 1997 when exports increased compared to the previous year. The overall decrease in exports amounts to 28,3 % in the period considered. In 1999 and 2000 the Community industry expects to export somewhat less than in the IP. This downward trend is likely to be explained by the fact that, as explained later in point 7.3, the countries concerned have significantly increased their marketing efforts in other third markets than the Community after the anti-dumping measures concerning imports of potash originating in the countries concerned came into force in the Community. Faced with fierce price competition, the Community industry has not been able to deliver the same quantities of potash in the third-country markets as before.

In detail, the development during the period considered was as follows:

*(in thousand tonnes)*

| | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Export sales volumes of the Community industry | 2 314 | 1 815 | 1 671 | 1 947 | 1 658 |

*Source:* Questionnaire replies of the Community industry.

6.6. CONCLUSION

(79) The evolution of various economic indicators of the Community industry during the period considered was mixed. After the imposition of combined measures (fixed duty and a minimum price) in 1994, the situation of the Community industry has improved. Economic factors such as average sales prices per tonne for the most-sold grade, volume of stocks and profitability showed a positive development.

(80) Indeed, average sales prices for standard grade potash with $40\ \% < K_2O \leq 62\ \%$ rose by 15,6 % during the period considered. Secondly, the volume of stocks has decreased since 1996: an indication of improving demand on the market. Thirdly, after two years of losses, the Community industry's sales have been profitable again since 1996. It is clear that this is due to increased sales prices, which were made possible by the introduction of more effective anti-dumping measures in 1994.

(81) Nevertheless, the analysis also shows that these positive developments do not cover all indicators and that, in particular from 1996 onwards, there has been a downward trend. Specifically, production volume, capacity, capacity utilisation, market share, sales volume, employment and investments did not develop favourably.

(82) The Community industry's sales volume decreased by 4,9 % during the period considered. Its production volume and capacity declined by 9,7 % and 7,0 % respectively, leading to a decrease of 2,2 percentage points in its capacity utilisation. Furthermore, the Community industry's investments plummeted by 39,7 % at the same time as it had to reduce its workforce by 18,0 %.

(83) As mentioned earlier, the Community consumption of potash decreased by about 2,3 %, reaching its lowest level in 1996. The Community industry lost 1,9 % of the Community market; the countries concerned lost 2,4 %, while other third countries, notably Israel, gained 3,4 %. Since 1996, however, the Community industry has lost more than 4 % of the Community market; the countries concerned gained 3,5 % while for the other third countries the share remained practically unchanged. It can be concluded, therefore, that imports from other third countries have had no significant impact on the economic situation of the Community industry between 1996 and the end of the IP.

(84) The average prices of the Community industry and of the countries concerned increased in a similar manner (except for standard potash with $K_2O >$ 62 %) as shown in recitals 57 and 69. The same applies for other third countries. However, prices from the countries concerned continued to be the lowest, especially for potash of Russian origin, negatively influencing sales volumes, market share and profitability of the Community industry, in spite of the restricted imports originating in the said three countries.

(85) Finally, the impact of declining export sales was considered. Export sales, which represented 24 % of the total sales of the Community industry during the IP, had decreased by 28,3 % during the period considered because of fierce competition on the third-country markets. Although this development may explain part of the negative development of the production of the Community industry in particular, it is not sufficient to explain this negative trend overall.

In conclusion, the investigation established that, although the situation of the Community industry has somewhat improved, several economic factors did not develop so favourably and that the Community industry continues to be vulnerable to a possible recurrence of injurious dumping if the measures were allowed to lapse.

## 7. **LIKELIHOOD OF RECURRENCE OF INJURY**

### 7.1. DOMESTIC MARKETS IN THE COUNTRIES CONCERNED

(86) The countries concerned possess huge raw material reserves of potash. Yet domestic consumption of potash in Belarus and Russia collapsed in the first half of the 1990s and remained at a low level during the period considered. Domestic sales in these two countries increased by about 6 % in the IP compared to 1994. They still represented less than a quarter of the corresponding potash production. There is no reason to believe that demand on the domestic market would have developed differently in Ukraine.

### 7.2. EXPORTS UNDER THE IPR REGIME

(87) An analysis of the sales prices for imports under the IPR regime was made in order to assess at which prices imports could be made in case anti-dumping measures were allowed to lapse. As can be seen in recital 62, IPC's prices in the Community, quoted almost exclusively under the IPR regime, undercut the Community industry's sales prices by significantly more than 10 % on average.

### 7.3. EXPORTS TO THIRD COUNTRIES BY THE COUNTRIES CONCERNED

(88) The development of exports of the countries concerned to the Community and of their Community market share is described in point 6.2.

(89) The development of the export volumes of Belarus and Russia to major markets other than the Community was also analysed on the basis of the questionnaire reply and subsequent submission of IPC. Ukrainian production is not sold through IPC and no information on Ukrainian export sales to third countries was made available as the Ukrainian exporting producers did not cooperate in the investigation. During the IP the main export market of Belarus and Russia was China, where imports increased by around 87 % during the period considered. The second largest market was Brazil, which in the IP imported about 34 times more potash from Belarus and Russia than in 1994. The United States of America and Norway were the third and fourth biggest markets with impressive increases in import volumes, as can be seen from the table below. Japan and other smaller markets in total somewhat decreased their imports from the two countries during the period considered.

(90) Norway, which has a significant user interest but no producers of potash, imported hardly any quantities from Belarus and Russia in 1994. Since the effective, combined anti-dumping measures against potash from the countries concerned were imposed by the Community, the exports of Belarus and Russia have been redirected into Norway to such an extent that the market share of the countries concerned in Norway reached 71,3 % ([1]) in the IP and the sales volumes of Belarus and Russia into this country exceeded total sales into the Community as early as 1995 ([2]).

(91) The table below, indexed for confidentiality reasons, shows in detail the development of the export sales of Belarus and Russia to markets other than the Community during the period considered.

*(Index)*

| Exports of the countries concerned to markets other than the Community | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| China | 100 | 167 | 127 | 183 | 187 |
| Brazil | 100 | 414 | 2 535 | 4 062 | 3 438 |
| USA | 100 | 104 | 103 | 157 | 157 |
| Norway | 100 | 3 833 | 5 750 | 5 383 | 4 933 |
| Japan | 100 | 94 | 78 | 79 | 84 |
| Others | 100 | 74 | 74 | 90 | 96 |
| Total | 100 | 130 | 137 | 188 | 186 |

*Source:* IPC questionnaire reply.

(92) In order to be able to assess the importance of these exports it should be noted that the exports of the countries concerned to the Community during the IP roughly correspond to their exports to Norway. Furthermore, the total exports of the countries concerned to third-country markets other than the Community roughly correspond to the Community industry's total sales on the Community market.

([1]) *Source:* International Fertiliser Industry Association.
([2]) *Source:* IPC questionnaire response.

(93) A price comparison for all types of potash on a delivered basis shows that sales prices to Norway, Brazil and Japan during the IP were at a higher level than prices to the Community. The price level in China was lower in previous years but reached the level of Community prices during the IP. Export prices to the United States of America have remained systematically lower than prices to the Community during the period considered.

7.4. PRODUCTION, CAPACITY, CAPACITY UTILISATION, STOCKS AND INVESTMENTS

(94) Information was received concerning the above indicators from the two cooperating companies in Russia and from one in Belarus. As Ukrainian companies did not cooperate no information was available except for capacity (277 000 tonnes per annum) published in a recent report by the International Fertiliser Industry Association.

(95) As can be seen from the table below, production capacity in Belarus and Russia remained steady during the period considered, totalling 19 844 000 tonnes of potash, which is about 33 % of world capacity and almost three times the volume of Community consumption.

*(in thousand tonnes)*

| Production capacity | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Belarus | 9 077 | 9 077 | 9 077 | 9 077 | 9 077 |
| Russia | 10 767 | 10 767 | 10 767 | 10 767 | 10 767 |
| Total | 19 844 | 19 844 | 19 844 | 19 844 | 19 844 |

*Source:* International Fertiliser Industry Association.

(96) Belarus and Russia managed to increase their production by 39 % during the period considered. As the table below (indexed for confidentiality reasons) shows production volumes have increased relatively steadily, with only one small downward correction in 1996.

*(Index)*

| Actual production | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Belarus | 100 | 111 | 108 | 129 | 138 |
| Russia | 100 | 113 | 106 | 137 | 140 |
| Total | 100 | 112 | 107 | 133 | 139 |

*Source:* Questionnaire reply of IPC.

(97) Along with the increasing production, the capacity utilisation of the producers in Belarus and Russia has improved but remains still at an exceptionally low level leaving a considerable amount of idle capacity. The table below (indexed for confidentiality reasons) demonstrates that the capacity utilisation rate of the producers improved by 38 % during the period considered.

*(Index)*

| Capacity utilisation | 1994 | 1995 | 1996 | 1997 | IP |
|---|---|---|---|---|---|
| Belarus | 100 | 111 | 109 | 130 | 137 |
| Russia | 100 | 116 | 108 | 139 | 142 |
| Total | 100 | 112 | 107 | 133 | 138 |

*Source:* Questionnaire reply of IPC

(98) No clear trend was established for stocks. In general the level of stocks varied significantly during the period considered. Stocks of the three producers were at a relatively low level at the end of the IP.

(99) Investments by Belarus and Russia in their potash mines and factories increased by around 172 % during the period considered. The growth trend was only interrupted once in 1996 when the level of investments dropped, but the following year investments again reached a level 3,5 times higher than in 1996. Since capacity has not been increased, it is probable that the investment was used to modernise the existing production facilities.

7.5. CONCLUSION ON THE LIKELIHOOD OF THE RECURRENCE OF INJURIOUS DUMPING

(100) The information available has shown that, although Belarus and Russia have managed to redirect part of their sales from the Community market to other markets such as China and Brazil and to obtain relatively favourable prices on some of these markets, the production capacity and capacity-utilisation rates of the producers in Belarus and Russia continue to be exceptionally low.

(101) Domestic consumption is significantly reduced and a change in this situation is not expected in the foreseeable future. Moreover, possible earnings on the Community market are much more attractive than those which can be achieved on the domestic market. These elements indicate that Belarusian and Russian export prices could be much lower than they were in the IP and still be attractive to the exporters concerned.

(102) The alternative markets in faraway countries are bound to be less profitable than the Community market, which, being close, is cost-efficient to reach by boat or by rail. In addition, customers in the Community traditionally pay for the goods in hard currency and with shorter payment terms. It should be noted that although the price level on some markets, like Brazil, is higher than in the Community, freight costs from the countries concerned to these destinations are much higher than to the Community. Sales to the Community market are even more attractive when compared to sales to the United States of America and China, which, on a delivered basis, yield lower prices than those to the Community. Norway serves as an example of a Western European country situated in the proximity of the countries concerned and having no duties on imported potash. Norway is now almost completely dominated by imports from the countries concerned. These imports occur at a somewhat higher price than imports under the IPR regime into the Community but still clearly below those of the Community producers.

(103) Therefore, the huge raw material reserves, the low capacity utilisation, the disadvantageous domestic situation in terms of consumption, the higher freight cost to alternative markets, the need for hard currency and the current market situation in Norway demonstrate that the export potential of the countries concerned to the Community at low prices is very high and that, in the absence of measures, there is the likelihood of the recurrence of injurious dumping.

(104) As far as Ukraine is concerned no information was made available due to that country's non-cooperation. In accordance with Article 18 of the basic Regulation, the facts available had to be used in these circumstances. In this respect it was found that the Ukrainian potash industry has close economic links to the Belarusian and Russian industry. It has already been demonstrated in point 4.4. that there is a likelihood of recurrence of dumping in significant volumes. It is beyond any reasonable doubt that such imports, which would be in direct competition with those from Belarus and Russia, would have an injurious impact on the Community industry. It was therefore concluded that, with respect to imports originating in Ukraine, there is a likelihood of recurrence of injurious dumping should the measures lapse.

(105) It is therefore concluded that, in the absence of measures, there is a likelihood of a recurrence of injurious dumping and that anti-dumping measures should therefore be maintained.

## 8. **COMMUNITY INTEREST**

### 8.1. INTRODUCTION

(106) 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, such as those of the Community industry, the importers and users of the product concerned. In order to assess the likely impact of a continuation of the measures, information was requested from all the interested parties mentioned above.

(107) It should be recalled that, in the previous investigations, the adoption and maintenance of measures was considered not to be against the interest of the Community. Furthermore, it should be noted that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place. Consequently, the timing and nature of the present investigation allows the assessment of any negative, undue impact of the anti-dumping measures imposed on the parties concerned.

(108) Questionnaires were sent to 17 importers/users, of which seven unrelated and two related importers/users replied. The importers and users received the same questionnaire as many of them act in the two roles. Furthermore, questionnaires were sent to three importer/user organisations: European Fertiliser Import Association (EFIA), European Fertiliser Manufacturers Association (EFMA) and COPA/Cosega. However, only EFIA replied to the questionnaire.

(109) On this basis it was examined whether, despite the findings on dumping, injury and continuation or 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.

### 8.2. INTERESTS OF THE COMMUNITY INDUSTRY

(110) As set out above, it is considered that, if the anti-dumping measures were allowed to lapse, the dumped imports destined for free circulation on the Community market would be likely to recur and that the situation of the Community industry would start deteriorating again from its currently moderately profitable status.

(111) This could entail a severe reduction in the numbers of employees in addition to the reductions that will occur as a result of the future closure of the French Community producer.

(112) Furthermore, although potash production in France will cease, the ongoing restructuring efforts and plans show that the Community industry is not ready to abandon this segment of production. Maintaining antidumping measures is therefore of prime interest to the Community industry.

### 8.3. INTERESTS OF IMPORTERS/TRADERS

(113) Two of the seven companies that replied to the importers/users questionnaire are purely traders of the product. The remaining five are also users of it. Main arguments from the traders' position were provided in EFIA's questionnaire reply.

(114) The importers of potash are against the prolongation of the anti-dumping measures. They argue that the combination of a fixed duty and a minimum price has completely excluded the producers of the countries concerned from the Community market, thus reducing competition within the Community to a minimum. As a result, they claim, the price of potash on the Community market has become artificially high and access to imported potash difficult especially to small traders.

(115) While it is true that, apart from imports under the IPR regime, potash from the countries concerned has practically been excluded from the Community market, imports from Canada, Israel, Jordan and from some smaller exporting countries, together with the existence of a number of Community producers, have guaranteed competition on the Community market. No representative evidence was found on the alleged difficult access for traders to imported potash. In any event the proposed measures will take a different form to those presently reviewed and are aimed at an increased access to the Community market for the imports from the countries concerned.

(116) It is thus concluded that the profitability of those importers who are purely traders of potash has not been negatively influenced by the imposition of the anti-dumping measures. It is also likely that a continuation of the measures in a different form will not lead to a future deterioration in their profitability.

8.4. INTERESTS OF USERS

(117) The direct users of potash as a fertiliser (farmers) did not express their position, although their representative organisation received the questionnaire. Therefore, it is to be concluded that the continuation of anti-dumping duties will not make a major difference for farmers.

(118) The five users who did reply to the questionnaire are all fertiliser manufacturers who buy potash from the Community industry and also import it from third countries. For them potash is a raw material for producing compound fertilisers that typically consist of three different nutrients: nitrogen, phosphorus and potassium (NPK-fertilisers).

(119) Most of the users, being also importers, argued in the same manner against the continuation of the measures as explained above in point 8.3 'Interests of importers/traders'. However, one importing user stated that the anti-dumping measures had created a certain price stability on the Community market for potash, which was beneficial for its activity.

(120) Users have little flexibility concerning their product mix whenever an anti-dumping duty for one of the fertiliser components is applied. As the competing fertiliser producers in third countries do not pay duty on their potash, the Community fertiliser manufacturers claim that they are unable to compete with the prices of the final product offered by their foreign competitors. On the export market the situation is completely different: there the Community fertiliser manufacturers can be competitive due to the possibility of importing under the IPR regime.

(121) In reply to these allegations the investigation showed that potash represents around 15 % to 30 % of the total cost of the compound fertiliser. The production costs of fertilisers increased during the period considered not only because of potash but for several reasons. It was established that the price levels of other fertiliser components, especially that of nitrogen, varied significantly during the period considered. In a particular example, the share of potash in the total price increase of the final product was calculated to be around 20 % during the period considered.

(122) Although it must be recognised that the cost situation of Community users of potash on the Community market has deteriorated since the measures were imposed, the effect of the potash prices on their total production costs is not likely to be such as to jeopardise their existence. Since the measures have been in place for seven years now, it can be concluded that their continuation will not imply a further deterioration in the situation of the users.

8.5. CONSEQUENCES FOR COMPETITION ON THE COMMUNITY MARKET

(123) As mentioned earlier, the measures in their current form have practically excluded potash from the countries concerned, apart from imports under the IPR regime. Even in this time period, it should be recalled that the importers and users have always enjoyed the presence of a number of competitors — Community and third country-based — on the market. However, it has been argued that, despite such a presence, the current form of measures, in particular the minimum price element, has affected the market in a way that has impeded competition. While no indications in this respect have been made available in the course of the investigation, it was found that, through the imposition of measures in the present form, major sources of supply have been practically excluded from the Community market. It is recalled that such de facto exclusion was not the purpose of the combined measures (a minimum price and a specific duty), whose purpose was simply to prevent circumvention and absorption of the original duties.

8.6. CONCLUSION ON COMMUNITY INTEREST

(124) Having analysed all the various interests involved, it is considered that, on the one hand, a continuation of the anti-dumping measures is likely to result in a stable price for potash on the Community market, entailing some negative effects on the economic situation of users of potash. On the other hand, leaving the Community industry without adequate protection against the dumped imports would most probably wipe out its already small profitability and lead to more serious problems than the user industry could possibly suffer. Therefore, the price disadvantage that will result for the users from the continuation of the anti-dumping measures is overridden by the benefits to the Community resulting from the prevention of the recurrence of the injurious dumping.

(125) However, since the current form of anti-dumping measures has had the effect of practically excluding imports of the product concerned, other than those destined for inward processing, and consequently of eliminating a significant source of supply on this market, it is concluded that there are no compelling reasons against the prolongation of the existing anti-dumping measures, but that it is in the interest of the Community to change the form of measures as explained below.

9. **DEFINITIVE ANTI-DUMPING MEASURES**

(126) It follows from the above that, as provided for by Article 11(2) of the basic Regulation (governing the request for a review lodged by the Community industry) and Article 11(3) (applicable to the interim review initiated by the Commission on its own initiative but limited to the form of the measures), the measures on imports of potassium chloride originating in Belarus, Russia and Ukraine imposed by Regulation (EEC) No 3068/92 should be maintained.

(127) It will be recalled that the current form of measures, i.e. a combination of a minimum price and a specific duty, was introduced by Regulation (EC) No 643/94. This form of measure was chosen in view of the particular situation which prevailed at that time. Indeed there were strong indications of circumvention of the type of anti-dumping duty initially imposed, i.e. a variable duty based on a minimum price. The current investigation has shown that this particular form of measures is no longer warranted as it is considered unlikely that the countries concerned would lower their export prices and thus absorb the fixed duty. The investigation has further shown, as explained in point 8.6, that, in order to allow potential sources of supply to operate on the Community market, it is not in the interest of the Community to maintain the measures in their current form. It is therefore considered appropriate to amend the form of the measures by eliminating the minimum-price component while retaining the fixed duty element.

(128) Finally, it should be noted that the Commission also received proposals for an undertaking from IPC, in accordance with Article 8 of the basic Regulation. These proposals were carefully examined and it was concluded that, in the absence of sufficient guarantees by the exporter and the Russian government, they could not be effectively monitored or enforced and that furthermore the risk of compensatory pricing of the product concerned imported into the Community under the IPR regime could not be excluded. The Commission was, therefore, not satisfied that the offers of price undertakings would guarantee the prevention of the injurious effects of dumping. The offers were therefore rejected,

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 1 of Regulation (EEC) No 3068/92 is hereby replaced by the following:

'*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of potassium chloride falling within CN codes 3104 20 10, 3104 20 50, 3104 20 90 and on special mixtures falling within CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91, ex 3105 90 99 originating in Belarus, Russia and Ukraine.

2. For the purpose of paragraph 1 of this Article potassium chloride will be either potassium chloride not containing any additional fertilising elements or potassium chloride containing additional fertilising elements in special mixtures. For the purpose of the application of the anti-dumping duty, special mixture is defined as a blend of two or more fertilising elements. Such a mixture is subject to an anti-dumping duty if the $K_2O$ content of the mixture or blend is 35 % or more, by weight, of the dry anhydrous product. Such product will fall under 'other than standard' grade.

3. The amount of duty shall be equal to the fixed amount in euro per tonne of KCl shown below per category and grade (standard potash is to be understood as potash in powder form):

**Belarus**

Potassium chloride not containing any additional fertilising elements:

| Category: | With a potassium content evaluated as $K_2O$, by weight, not exceeding 40 % on the dry anhydrous product | | With a potassium content evaluated as $K_2O$, by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product | | With a potassium content evaluated as $K_2O$, by weight, exceeding 62 % on the dry anhydrous product |
|---|---|---|---|---|---|
| Grade | Standard | Other than standard (including granular) | Standard | Other than standard (including granular) | |
| TARIC code | 3104 20 10 10 | 3104 20 10 90 | 3104 20 50 10 | 3104 20 50 90 | 3104 20 90 00 |
| Fixed amount (EUR/tonne) | 19,51 | 30,84 | 29,51 | 46,65 | 48,19 |

Potassium chloride containing additional fertilising elements in special mixtures:

| | With a potassium content evaluated as $K_2O$, by weight, equal or exceeding 35 % but not exceeding 40 % on the dry anhydrous product | With a potassium content evaluated as $K_2O$, by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product |
|---|---|---|
| TARIC code | 3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10 | |
| Fixed amount (EUR/tonne) | 30,84 | 46,65 |

**Russia**

Potassium chloride not containing any additional fertilising elements:

| Category: | With a potassium content evaluated as $K_2O$, by weight, not exceeding 40 % on the dry anhydrous product | | With a potassium content evaluated as $K_2O$, by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product | | With a potassium content evaluated as $K_2O$, by weight, exceeding 62 % on the dry anhydrous product |
|---|---|---|---|---|---|
| Grade | Standard | Other than standard (including granular) | Standard | Other than standard (including granular) | |
| TARIC code | 3104 20 10 10 | 3104 20 10 90 | 3104 20 50 10 | 3104 20 50 90 | 3104 20 90 00 |
| Fixed amount (EUR/tonne) | 19,61 | 26,01 | 29,65 | 39,33 | 40,63 |

Potassium chloride containing additional fertilising elements in special mixtures:

| | With a potassium content evaluated as $K_2O$, by weight, equal or exceeding 35 % but not exceeding 40 % on the dry anhydrous product | With a potassium content evaluated as $K_2O$, by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product |
|---|---|---|
| TARIC code | 3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10 | |
| Fixed amount (EUR/tonne) | 26,01 | 39,33 |

**Ukraine**

Potassium chloride not containing any additional fertilising elements:

| Category: | With a potassium content evaluated as $K_2O$, by weight, not exceeding 40 % on the dry anhydrous product | | With a potassium content evaluated as $K_2O$, by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product | | With a potassium content evaluated as $K_2O$, by weight, exceeding 62 % on the dry anhydrous product |
|---|---|---|---|---|---|
| Grade | Standard | Other than standard (including granular) | Standard | Other than standard (including granular) | |
| TARIC code | 3104 20 10 10 | 3104 20 10 90 | 3104 20 50 10 | 3104 20 50 90 | 3104 20 90 00 |
| Fixed amount (EUR/tonne) | 19,61 | 30,84 | 29,65 | 46,65 | 48,19 |

Potassium chloride containing additional fertilising elements in special mixtures:

| | With a potassium content evaluated as $K_2O$, by weight, equal or exceeding 35 % but not exceeding 40 % on the dry anhydrous product | With a potassium content evaluated as $K_2O$, by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product |
|---|---|---|
| TARIC code | 3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10 | |
| Fixed amount (EUR/tonne) | 30,84 | 46,65 |

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

5. The provisions in force with regard to customs duties shall apply.'

*Article 2*

This Regulation shall enter into force on the day following 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.

Done at Brussels, 8 May 2000.

*For the Council*

*The President*

J. PINA MOURA