# COMMISSION REGULATION (EEC) No 1289/87

## of 8 May 1987

## imposing a provisional anti-dumping duty on imports of urea originating in Czechoslovakia, the German Democratic Republic, Kuwait, Libya, Saudi Arabia, the USSR, Trinidad and Tobago and Yugoslavia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

### A. PROCEDURE

(1) In July 1986 the Commission received a complaint lodged by CMC-Engrais (Common Market Committee of the Nitrogen and Phosphate Fertilizer Industry) on behalf of producers of urea whose collective output constitutes substantially all Community production of the product in question. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports into the Community of urea falling within Common Customs Tariff subheadings 31.02 B and ex 31.02 C corresponding to NIMEXE codes 31.02-15 and 31.02-80 and originating in Czechoslovakia, the German Democratic Republic, Kuwait, Libya, Saudi Arabia, the USSR, Trinidad and Tobago and Yugoslavia and commenced an investigation.

The Commission also published a notice concerning supplementary allegations made by the complainants with regard to the conditions under which anti-dumping measures may be taken with retroactive effect [3].

(2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The majority of the known producers, exporters and importers made their views known in writing. The producers/exporters of the German Democratic Republic, Libya, Yugoslavia, Trinidad and Tobago and a number of importers have requested and were granted hearings.

(4) Submissions were made on behalf of Community purchasers of urea.

(5) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

**(a) EEC producers :**

*Belgium*

Nederlandse Stikstof Maatschappij (NSM), Brussels (a subsidiary of Norsk Hydro) ;

*France*

CDF Chimie AZF, Paris,

Compagnie Française de l'Azote (COFAZ), Paris (since 1 February 1986 a subsidiary of Norsk Hydro) ;

*Italy*

Agrimont SpA, Milano (a subsidiary of Montedison)

Enichem Agricultura, Milano (a subsidiary of Enichem) ;

*United Kingdom*

Imperial Chemical Industries Ltd PLC (ICI), Billingham ;

**(b) Non-EEC producers/exporters :**

*Kuwait*

Petrochemical Industry Company (PIC), Kuwait (subsidiary of Kuwait Petroleum Company) ;

*Saudi Arabia*

Al-Jubail Fertilizer Company (SAMAD), Al-Jubail and Saudi Arabian Fetilizer Company (SAFCO), Dammam, both subsidiaries of Saudi Basic Industries Corporation (SABIC), Riyadh ;

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[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No C 254, 11. 10. 1986, p. 3.
[3] OJ No C 34, 12. 2. 1987, p. 3.

*Trinidad and Tobago*

National Energy Corporation of Trinidad and Tobago Ltd, (NEC), Point Lisas and Fertilizers of Trinidad and Tobago Ltd (Fertrin), Point Lisas.

(6) The Commission requested and received detailed written submissions from complainant Community producers, most exporters and the majority of importers and verified the information therein to the extent considered necessary.

(7) The investigation of dumping covered the period from 1 July 1985 to 30 September 1986.

## B. DUMPING

### (i) Normal value

(a) *Saudi Arabia*

(8) Normal value was provisionally determined on the basis of the domestic prices of SAFCO, which sold the urea produced by SAMAD during the period under investigation and provided sufficient evidence.

(9) For this purpose the sales prices charged by SAFCO to independent customers were used. The Commission adopted this line for the following reasons :

Article 2 (3) (a) of Regulation (EEC) No 2176/84 requires normal value to be based on prices actually paid or payable in the ordinary course of trade ; Article 2 (7) entitles the Commission to disregard the prices charged in transactions between associated companies, unless the prices and costs involved are comparable to those involved in transactions between parties which have no such link. In this case, since there were no sales by the manufacturing company (SAMAD) to non-associated third parties, the Commission could not satisfy itself that the prices and costs involved in the sales between SAMAD and SAFCO corresponded to transactions between non-associated companies.

The evidence given during the investigation showed that SAMAD and SAFCO form an integral part of one corporate group (SABIC). The fact that they are legally separate entities does not alter the existence of a single economic entity. What is relevant is not the legal structure but the fact that SAFCO acts as sales company with regard to the product concerned manufactured by SAMAD.

(10) Since exports to the Community during the period under investigation consisted not only of treated, but also of untreated material, it was considered appropriate to determine normal value separately for each of these types.

(b) *Kuwait, Trinidad and Tobago*

(11) In seeking to determine the normal value the Commission had to take account of the fact that there are no significant sales of the like product on the domestic market of these countries. The Commission decided therefore that the normal value for the producing companies in these countries should be established on the basis of the constructed value.

The constructed values were determined by adding cost of production and a reasonable margin of profit. The cost of production was computed on the basis of all costs, both fixed and variable, in the ordinary course of trade, in the country of origin, of materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses.

With regard to the producer in Kuwait a profit margin of 10 %, considered to be reasonable in the light of the company's previous performance, was added to these costs. With regard to the producer in Trinidad and Tobago, a profit margin of 7 % was provisionally established. This margin was considered to be reasonable, given that normal production only started in 1985, and in the light of the profit margins found for exporters of the product concerned in other countries concerned in these proceedings. This margin was added to the costs.

The producer in Trinidad and Tobago asked the Commission to exclude amortization and depreciation from the cost of production on the grounds that it had recently started production of the product concerned and, therefore, that these costs should not be considered as being in the ordinary course of trade. This request cannot be granted because these items are normal components of a cost of production of a company in a market economy country. It was also requested that financing costs relating to the construction of the plant be excluded because otherwise the Community would be acting in contravention of Articles 129 and 185 of the third Lomé Convention. However, such a request cannot be granted because account can only be taken of the stage of development of the exporting country when examining what measures are most appropriate, but not when determining dumping, for which objective criteria have to be applied. This interpretation is in line with Article 13 of the Agreement on Implementation of Article VI of the GATT.

(c) *Yugoslavia*

(12) In the absence of sufficient cooperation from the exporter, normal value was provisionally determined, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84, on the basis of the facts available, i.e. the domestic price payable on the domestic market as alleged in the complaint.

(d) *Libya*

(13) In the absence of sufficient cooperation from the exporter, normal value was provisionally determined, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84, on the basis of the facts available, i.e. the constructed value alleged in the complaint. The costs used in the complaint for calculating the constructed value were examined by the Commission to the extent possible and were found to be reasonable.

The same profit margin as that used with regard to the producer in Kuwait was added to the costs.

(e) *Czechoslovakia, the German Democratic Republic and the USSR*

(14) In order to establish whether the imports from Czechoslovakia, the German Democratic Republic and the USSR were dumped, the Commission had to take account of the fact that these countries do not have market economies and the Commission therefore had to base its determinations on the normal value in a market economy country. In this connection the complainants had suggested the Austrian market.

(15) However, most of the exporters and importers of the product concerned originating in these three countries objected to this choice. Furthermore, in order to avoid an additional administrative burden, the Commission normally determines normal value in one of the market economy countries already involved in the proceeding. It therefore invited parties to make comments concerning the possibility of determining normal value in one of the five market economy countries involved in the present proceeding and in particular concerning Saudi Arabia, with regard to which the complainants had suggested that normal value be determined on the basis of domestic prices.

The choice of Saudi Arabia was contested by one of the importers of the USSR product, mainly for the following reasons :

(i) by choosing domestic prices in Saudi Arabia the normal value would be higher than the Austrian normal value put forward by the complainants ;

(ii) users of urea in Saudi Arabia allegedly benefit from subsidies enabling them to pay artificially high prices ;

(iii) only a small proportion of the urea production in Saudi Arabia is consumed domestically.

However, these arguments are rejected because :

(i) a normal value put forward by the complainants is only one of the elements to be considered by the Commission when choosing the appropriate market economy country ;

(ii) no evidence was submitted to show that users in Saudi Arabia benefit from subsidies nor that for this reason prices would be artificially high in Saudi Arabia ;

(iii) it was found that there is no disproportion between the sales volume of urea on the domestic market in Saudi Arabia on the one hand, and the sales volume exported to the Community on the other, or, for that matter, the sales volume exported in general.

(16) The Commission considered that, for the purpose of this provisional duty Regulation, Saudi Arabia constitutes in this case an appropriate and not unreasonable analogue country under Article 2 (5) of Regulation (EEC) No 2176/84 for the following reasons :

(i) Saudi Arabia is not a particularly protected market, given that no customs duties are levied on imports of urea, at least not of urea originating in the Community ;

(ii) prices charged in Saudi Arabia for urea manufactured by SAMAD were not in an unreasonable proportion to the production costs ;

(iii) the product originating in Saudi Arabia is similar to that originating in the State-trading countries concerned ;

(iv) on the basis of facts available there are no significant differences in technology and production processes which could lead to significant differences in cost of production in Saudi Arabia and the three other countries concerned ;

(v) it was also found that the nature of the raw material, i.e. gas, used for the production of ammonia from which urea is derived and which normally accounts for at least 50 % of the cost of production, is comparable. In as much as the advantages which may result from the fact that the exporting countries have their own gas deposits may be reflected in the sales

prices of urea, the choice of Saudi Arabia is considered to be appropriate, since both Saudi Arabia and the USSR are in such a situation. With respect to Czechoslovakia and the German Democratic Republic, which do not have such natural resources, this choice is considered to be to their advantage.

(ii) *Export prices*

(17) Export prices were generally determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

With regard to exports to the Community of the product originating in the USSR, it was found that the majority were made through a subsidiary company in the Community. In such circumstances the export price is normally reconstructed, pursuant to Article 2 (8) (b) of Regulation (EEC) No 2176/84, on the basis of the price at which the imported product is first resold to an independent buyer. However, for the purposes of a preliminary determination and subject to a future on-the-spot investigation at the premises of the importer, it is considered sufficient to determine the export price for these transactions on the basis of the invoice value paid by the importer to the exporter. In this respect there is reason to believe that the invoice prices are not very substantially different from the level which will be reached by reconstructing the export price.

With regard to the export prices charged for supplies to the Community, several exporters argued that they had no choice but to sell at the low prices found by the Commission during the investigation because of the worldwide depressed price level of this product.

In this respect the Commission found contradictory information which showed that prices outside the Community were sometimes higher and sometimes lower than within the Community. In any event, the fact that prices for a particular product are depressed outside the Community does not constitute any justification whatsoever for exporters to sell their products at dumped prices within the Community. Whether or not such imports cause material injury is another question, which is examined below.

(iii) *Comparison*

(18) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability. As far as differences in conditions and terms of sale were concerned, allowances were limited to those differences which bore a direct relationship to the sales under consideration, such as credit terms, banking charges, transport, insurance, commissions, packaging and handling.

(19) Requests for other adjustments such as salaries paid to salesmen, technical assistance, publicity and warehousing were not granted at this stage of the proceeding because supporting evidence or satisfactory evidence showing that differences in costs were directly related to the sales under consideration was not submitted.

(20) The comparison of export prices with normal value was made on the following basis :

| | |
|---|---|
| Saudi Arabia : | ex-warehouse |
| Kuwait and Trinidad and Tobago : | fob |
| Yugoslavia, Libya, Czechoslovakia, the German Democratic Republic and the USSR | ex-works |

(iv) *Dumping margins*

(21) The margin of dumping was calculated for each exporter as the amount by which the normal value as established exceeds the price for each export transaction to the Community.

The preliminary examination of the facts showed the existence of dumping in respect of the producers/exporters involved in this proceeding.

(22) These margins vary according to the exporter, the weighted average margin for each of the exporters investigated being as follows :

| | % |
|---|---|
| (a) *Saudi Arabia :* | |
| SAMAD | 61 |
| (b) *Kuwait :* | |
| PIC | 45 |
| (c) *Trinidad and Tobago :* | |
| NEC | 43 |
| (d) *Yugoslavia :* | |
| INA | 78 |
| (e) *Libya :* | |
| Napetco | 69 |
| (f) *Czechoslovakia :* | |
| Petrimex | 40 |
| (g) *German Democratic Republic :* | |
| Chemie-Export-Import | 59 |
| (h) *USSR :* | |
| Sojuzpromexport | 63. |

## C. INJURY

(23) With regard to the injury caused by the dumped imports the evidence available to the Commission shows that imports of urea into the Community from Czechoslovakia, ther German Democratic Republic, Kuwait, Libya, Saudi Arabia, the USSR, Trinidad and Tobago and Yugoslavia increased from 89 965 tonnes in 1984 to 298 595 tonnes in 1985, i. e. by 232 %. During the first nine months of 1986 these imports amounted to 713 621 tonnes.

On the assumption that imports continued at the same rate during the last three months of 1986, imports from these countries would have amounted to 951 496 tonnes and would have shown an increase of another 219 % in 1986 compared to 1985.

The imports (in tonnes) from each of the countries involved in these proceedings increased between 1984 and 1986 (assuming that the imports continued at the same rate during the last three months of 1986 as during the first nine months of 1986) as follows :

| | 1984 | 1985 | 1986 |
|---|---|---|---|
| Czechoslovakia | 34 257 | 33 621 | 41 269 |
| German Democratic Republic | 33 771 | 26 180 | 96 365 |
| Kuwait | — | 11 212 | 62 279 |
| Libya | 2 188 | 15 252 | 243 158 |
| Saudi Arabia | — | 20 000 | 147 300 |
| USSR | 4 000 | 140 000 | 194 667 |
| Trinidad and Tobago | — | 30 209 | 126 495 |
| Yugoslavia | 15 749 | 22 121 | 39 963 |

(24) This development would represent an increase in the market share held by these countries in the Community from 2,32 % in 1984 to 7,28 % in 1985 and to 20 % in 1986. If the quantity of urea manufactured by the EEC producers and destined for captive use is deducted from total consumption in the Community, this development represents an increase in market share held by the dumped imports from 3,29 % in 1984 to 10,15 % in 1985 and to 26,00 % in 1986. If this development is related to the use of urea in the agricultural sector only, assuming that 90 % of the dumped imports are sold in this sector, such a development represents an increase in market share from 3,85 % in 1984 to 11,55 % in 1985 and to 28,74 % in 1986.

(25) It was argued by several parties that, when assessing the impact of the dumped imports on the Community industry, account should be taken of the fact that Community producers themselves purchased part of the dumped products.

In this respect it was found that during the period under investigation approximately 80 000 tonnes of urea originating in the German Democratic Republic, Libya, Trinidad and Tobago and the USSR had been imported directly or indirectly by Community producers of urea.

(a) During the period under investigation the French producers purchased approximately 40 000 tonnes of the dumped products. These transactions took place mainly because one of the producers had closed down its main plant for nine months in 1985 in order to improve efficiency and this had resulted in insufficient material available for supplying domestic customers. According to the French producers they also wanted to prevent some of their customers from switching to another source of supply. On the basis of the information available to the Commission the resale prices of the imported product were similar to the prices charged by the producers for their own product.

(b) The Italian producers purchased the total quantity of urea originating in the USSR which entered Italy during the period under investigation, i. e. 16 881 tonnes.

Approximately 4 500 tonnes of this quantity was resold to regular customers at prices significantly lower than the sales prices charged for the product manufactured in Italy. With regard to the remaining quantity the resale prices were similar to those charged for the product manufactured and sold in Italy.

(c) In 1986 the Portuguese producer of urea purchased 17 182 tonnes of the product concerned originating in Libya and approximately 6 000 tonnes of urea originating in the German Democratic Republic. The reason for these transactions was a major breakdown at this producer's plant.

Under these circumstances, and for the purpose of this provisional duty Regulation, the Commission has decided that the French and Italian producers who imported and resold the dumped product should not be excluded from the Community industry affected by the dumped imports. The quantity imported and resold by these producers represents a minor share (0,33 % and 3,8 % in 1985 and the first nine months of 1986 respectively) of total sales of agricultural urea by the complainant producers in the Community and only a minor part, representing 0,14 % and 1,44 % respectively of the total consumption in the Community, was resold at particularly low prices. The Commission accepts that in so far as injury was caused to Community producers by these low priced sales, this injury was self-inflicted. Given the limited importance of the transactions in question, this does not affect the rate of provisional duty. To the extent that the bulk of these imports were resold at prices corresponding to the producers' own prices, no injury was caused to the Community producers themselves. However, since the Portuguese producer had no significant production of its own in 1986, it is considered appropriate to exclude this company from the injury assessment.

It was also argued that account should be taken of the fact that some imports of the dumped product into France were made by SIPA, as this importer was allegedly related to the French producers. However, it was found that the French producers hold substantially less than 50 % of the shares of the capital of this company, (users and importers holding together over 50 % of the shares).

(26) It was found that between 1984 and 1986, assuming that the trend during the first nine months continued during the last three months of 1986, consumption of urea in the Community on the free market increased by 33,7 % and for agricultural purposes by 41,6 %.

When examining the impact on the Community market it was found that the total production of urea fell from approximately 5 567 000 tonnes in 1984 to 4 870 000 tonnes in 1985 and to 4 313 000 tonnes in 1986 (assuming that the rate of production for the first nine months of 1986 continued during the remaining three months of 1986), i. e. by 12,5 % and 11,4 % in 1985 and 1986 respectively. The production of urea available for the free market fell from an estimated 4 415 321 tonnes in 1984 to an estimated 3 710 000 tonnes in 1985 and to an estimated 3 228 000 tonnes in 1986, assuming that the rate of production for the first nine months of 1986 continued during the remaining months of 1986. This development would represent a decrease of 16 % and 13 % in 1985 and 1986 respectively, in comparison with preceeding years.

(27) As far as the capacity utilization of the Community industry is concerned, it decreased from approximately 85 % in 1984 to approximately 77 % in 1985 and further to approximately 66 % in 1986. Separate data concerning the capacity utilization relating to the production of urea for the free market only were not available.

(28) Total sales in the Community of urea manufactured in the Community increased from approximately 3 587 000 tonnes in 1984 to approximately 3 615 000 tonnes in 1985. In 1986 they decreased to approximately 3 461 000 (assuming that the trend for the first nine months of 1986 continued during the last three months of 1986), i. e. to a level 3,5 % below that of 1984. The sales of the Community produces of urea destined for the free market in the Community decreased from 2 435 771 tonnes in 1984 to 1 782 315 tonnes during the first nine months of 1986. Assuming that the trend of sales over the first nine months of 1986 continued during the remaining three months of 1986, sales would have amounted to 2 376 420 tonnes in 1986 corresponding to a decrease of 2,44 % compared to 1984. These companies' sales of urea for agricultural purposes remained stable during the same period.

Community producers' sales of urea outside the Community fell from approximately 1 901 000 tonnes in 1984 to approximately 1 492 000 in 1985 and to approximately 728 000 tonnes in 1986 (assuming that the trend during the first nine months continued during the last three months). This trend did not, however, affect the production costs which were used as the basis for the calculation of the anti-dumping duty.

(29) The share of the freely available urea market held by the Community producers amounted to 89,15 % in 1984. In 1985 it decreased to 83,47 % and for the first nine months of 1986 it decreased further to approximately 65 %. These producers' share of the market of urea used for agricultural purposes decreased from 87,32 % in 1984 to 81,18 % in 1985 and to 61,46 % for the first nine months of 1986.

In France and Italy, which represented the main markets for agricultural urea before the accession of Spain and Portugal to the Community, the Community producers' share of the agricultural urea market dropped from 97,35 % to 81,49 % and from 89,54 % to 72,10 % respectively between 1984 and 1986.

(30) As far as prices and profitability are concerned, the Commission considered it appropriate to examine the following :

(i) the development of the sales prices at which the complainant producers sold urea throughout the period from 1 July 1985 to 30 September 1986 in the Community ;

(ii) the relationship between these prices, the cost of production incurred by the Community producers of urea during this period and the profitability relating to their sales of urea in the Community ;

(iii) the relationship between the prices charged by the complainant producers and the prices at which the dumped products were sold in the Community.

Given that a significant number of importers did not cooperate with the Commission during the investigation, it was difficult to calculate the overall level of price undercutting caused by the dumped imports. Weighted average margins were therefore provisionally calculated on the basis of the facts available, i. e. export prices plus import duties, a reasonable profit margin for the importer and other costs. In both Italy and France, considerable margins of price undercutting were found (see recitals 31 and 32).

Given that an estimated 90 % of the dumped imports were sold for agricultural purposes, these data were examined in the first place with regard to those Community producers who sold urea in the traditional markets of agricultural urea, i. e. Italy and France, and who cooperated sufficiently with the Commission during the investigation. In 1985 these producers accounted for more than 50 % of the sales of agricultural urea made by Community producers in Italy and France. In the second place the Commission also examined, where appropriate, to what extent the dumped imports had an impact on the prices of urea used for technical applications, i. e. mainly for the production of glues and synthetic resins.

(31) *Italy*

(a) The agricultural urea market

In 1985 consumption on this market amounted to approximately 1 000 000 tonnes, representing approximately 52 % of total consumption of agricultural urea in the Community as constituted until 31 December 1985. The Italian authorities usually fix CIP (Comitato Interministeriale Prezzi) prices, i. e. monthly maximum sales prices, prior to or at the beginning of the agricultural year (June to May) on the basis of data concerning the development of the costs of production for urea submitted by the Italian producers. The price structure is normally as follows :

(i) a basic price is fixed for the months of November and December ;

(ii) given the fact that in the period from June to October urea consumption is low, prices are fixed at a lower level than the basic price in order to encourage users to purchase the product earlier and store it themselves ;

(iii) as demand for and consumption of urea are high during the period from January to May, prices are fixed above the basic price.

It was found that during the major part of the period from 1 July 1985 to 30 September 1986 market prices deviated significantly from the CIP prices fixed for each of the months in question. With regard to one of the two Italian producers of urea holding a substantial market share in Italy, it was established that its monthly average net invoice value (before discounts) decreased by approximately 15 % between July 1985 and June 1986. It was also found that the weighted average margins of price undercutting varied between 15 % and 21 % and that the Community producer concerned was obliged to grant discounts the amounts of which increased continuously.

During the period from 1 July 1985 to 30 June 1986 these discounts represented in total 18,3 % and 22,6 % for prilled and granulated urea respectively of the total net invoiced value. As a result, the net prices after discount over the same period decreased by 31 % and 32 % for prilled and granulated urea respectively.

With regard to the development of this company's costs of production (per unit), it was found that in 1985 they were 15 % higher than in 1984 whereas the average net sales price decreased by approximately 2 % between 1984 and 1985. It was also found that during the first nine months of 1986 compared to the first nine months of 1985 the costs of production per unit had decreased by 16 % whilst the average net price per unit after discount had fallen by 27 %.

As far as the profitability of the same producer is concerned, profits were found to have fallen by 13 % in 1985 and, during the first nine months of 1986, losses incurred amounting to 8 % on total domestic sales of urea.

(b) The technical urea market

In 1985 consumption on this market reached an amount corresponding to approximately 24 % of total consumption of the technical type of urea in the Community as constituted until 31 December 1985. The Italian authorities do not fix CIP prices for this type of urea.

It was found that the weighted average margins of price undercutting varied between 5 % and 17 % and that the average net sales price for this type fell by 40 % between July 1985 and June 1986.

Furthermore, it was found that the costs of production for this type of product were similar to those of the agricultural type and that profitability between July 1985 and September 1986 followed the same trend as for agricultural urea.

(32) *France*

In 1985 consumption on the agricultural urea market amounted to approximately 375 000 tonnes corresponding to approximately 20 % of total consumption of agricultural urea in the Community as constituted until 31 December 1985.

Suppliers of urea in France traditionally set their list prices at the beginning of the season (July to June) for a period of 12 months. In order to encourage customers to purchase and store urea some time before consumption, list prices were significantly lower at the beginning of the season. The lowest prices were set for supplies in July. For deliveries during the subsequent months a monthly price increase by a fixed margin over the base price was set.

Since 1984/85 this system has been replaced by the 'clause de baisse' rule, according to which the invoice value is adjusted retroactively during the season in the light of lower prices offered on the market by other suppliers. The following findings were made with regard to three Community producers who, during the first nine months of 1986, represented approximately 80 % of Community supplies of agricultural urea in France. The average invoice price before discount of the Community producers concerned was undercut by the dumped imports by weighted average margins varying between 27 % and 35 %.

(i) Company A :

The company had to lower its invoice value and grant rebates retroactively resulting in a drop in the average net sales price by 30 %. The average costs of production at the plant from which almost all production was sold on the domestic market remained practically stable during this period.

With regard to sales on the domestic market during the second half of 1985, the company remained profitable. During the first six months of 1986, however, losses amounting to 28 % were incurred on domestic sales.

With regard to sales of technical urea, it was found that the average net sales price to the biggest single customer representing the majorty of sales of this product fell by 20 % between July 1985 and June 1986.

(ii) Company B :

The net average sales price decreased by 32 % between July 1985 and June 1986 due to lower invoice value and retroactive rebates. However, this company's major plant producing urea destined for the French market was closed down for a period of nine months in 1985 and production did not return to normal until March 1986. It is therefore considered inappropriate to take account of the development of costs of production or profitability of this company.

(iii) Company C :

The average net sales price before discount of this producer fell during this period by 37 %. In addition, in November 1985, the company started making provisions in view of the competitive market situation and the need to adjust prices retroactively. In March 1986 the provision was increased by 20 % per tonne. The rebates effectively paid amounted to 5,3 % of net turnover between June 1985 and May 1986.

For supplies of urea in the period from June 1986 to September 1986 the provision was further increased by 10 %. The total amount of provisions corresponded to 17,7 % of turnover during the same period.

Between the first half of 1985 and the first nine months of 1986 average cost of production decreased by 31 %, but profits decreased by approximately 83 %.

(33) *Spain*

Spain is another major market with a large consumption of urea. However, since, prior to accession, market conditions in Spain differed significantly from those prevailing in the Community as constituted until 31 December 1985, and

since in 1986 a Spanish conversion plan for the fertilizer sector was in operation, it was considered inappropriate to make additional injury findings with regard to the Spanish producers.

(34) In establishing the impact of the dumped imports on the Community industry the Commission has considered the effect of all dumped imports from all countries concerned. In analysing whether cumulation was appropriate, the Commission considered whether the dumped imports in question contributed to the material injury sustained by the Community. In reaching its conclusion the Commission considered the comparability of the imported products in terms of chemical and physical characteristics, volumes imported, the increase in volume of imports since 1984, the low level of prices attributable to products of all supplying countries and the extent to which each of the imported products competed in the Community with the like product of the Community industry. On the basis of such analysis the Commission concluded that for the purposes of establishing the level of injury sustained by the Community industry regard should be paid to the effect of the dumped imports cumulated from all exporting countries concerned.

With regard to the imports of the product originating in Trinidad and Tobago, it was argued that these did not compete with the product originating in the other third countries involved in the proceeding since the material produced and exported to the Community was of the granulated type used for blending into mixed fertilizers, whereas the type originating in the other countries involved in this proceeding and sold in the Community was the prilled material. Furthermore, it was argued that it was generally sold at prices higher than those charged for prilled urea.

However, it was found during the investigation that granulated and prilled urea are like products. Fristly, prilled and granulated urea are chemically identical. Secondly, the physical differences such as unit size, crushing strength or abrasion resistance, do not significantly affect the interchangeability of both types. Also, no evidence was found to show that during the period under investigation a premium was paid for granulated urea. As far as import prices of the product originating in Trinidad and Tobago are concerned, it was found that the average price charged by the exporter in Trinidad and Tobago during the period under investigation was no higher than that charged during the same period by most other exports involved in this proceeding.

(35) The Commission has considered whether injury has been caused by other factors such as the worldwide glut of urea which, according to a number of exporters and importers, has led to overall price depression. Furthermore, some parties suggested that, if it were established that Community producers were encountering difficulties, these were due to severe competition amongst the Community producers themselves and not to imports from third countries.

On the basis of the information available to the Commission it appears that since 1984 there has been a significant worldwide unused production capacity and an excess of production over consumption of urea and other fertilizers which, even in the absence of dumped imports, might have led to a fall in prices in the Community, particularly as the fertilizer market is a highly transparent market in which information in general is readily available to buyers and sellers. Account has been taken of this factor when calculating the amount of anti-dumping duty necessary to eliminate the injury (see recital 42).

With regard to intra-Community sales it was found that significant quantities of urea for agricultural applications were sold on the French market by Community producers established in other Member States. Considering that urea is a very price sensitive product, these producers also had to lower their sales prices or grant rebates on the French market. No significant sales by other Community producers took place in Italy.

As far as imports from third countries not involved in these proceedings are concerned, prior to the initiation of these proceedings the Commission examined the shares held by each of these exporting countries on the Community market, on the basis of the *prima facie* evidence submitted by the complainants. It was found that the size of these individual market shares was not important enough for them to be included in the present proceedings.

(36) The Commission took all this into account. It considered, however, that the substantial increase in dumped imports and the particularly low prices at which they were offered for sale in the Community were a major factor in forcing the Community industry to align its prices downwards to levels insufficient to enable it to cover its costs. In particular for a commodity such as urea, for which the purchase price appears to be the determining factor and for which the loyalty between supplier and

customer appears to be of little importance, if any, low priced offers from outside may have serious adverse effects on the domestic industry. This led the Commission to determine that, despite the existing over-capacity and glut, the effects of the dumped imports of urea originating in the countries concerned in this proceeding, taken in isolation, have to be qualified as constituting material injury to the Community industry concerned.

## D. COMMUNITY INTEREST

(37) Farmer's associations argued that it was not in the Community's interest that action be taken as it would increase the purchase price of urea to be paid by farmers. However, no evidence was submitted to show that protective measures would have a significant impact on the costs of production of farmers or that they would be prevented from passing on such an increase to the consumers.

(38) It was also argued that protective measures would discourage Community producers of urea from reducing their sales prices of the product concerned in the light of the substantial fall in the price of gas, the main raw material in the production of urea, which has occurred since the beginning of 1986. However, it was found that during the period under investigation the prices of Community producers generally decreased by much more than the reduction in their costs of production. In this respect it is considered that excessive price developments should not be imposed on Community producers due to a sharp increase of the imports at unfairly low prices.

(39) Furthermore, it was argued that it was not in the Community's interests to take protective measures against countries such as Trinidad and Tobago, Kuwait and Saudi Arabia in the light of the special features of the relations between the Community and these third countries.

The Commission considers that, although good realtions with these countries represent a great interest to the Community, normal trade relations imply that sales do not take place at dumped prices. Also, the Community would be acting in a discriminatory manner if it took protective measures against exporters from some countries which sold at dumped prices in the Community but not against exporters from other countries which were engaged in the same practices.

(40) In view of the particularly serious difficulties facing the Community industry the Commission has come to the conclusion that it is in the Community's interest that action be taken. In order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti-dumping duty.

## E. RATE OF DUTY

(41) Having regard to the extent of the injury caused, the rate of such duty should be less than the dumping margins provisionally established but adequate to remove the injury caused.

(42) In order to determine the amount of duty provisionally necessary to eliminate the injury suffered by the Community industry, the Commission considered the following elements :

— the selling price necessary to cover the cost of production incurred during the period from 1 July 1985 to 30 September 1986 and to provide an adequate profit margin to the Community industry,

— the unused production capacity and excess of production over consumption of urea which were regarded as having created a situation in which representative Community producers would not have made a profit in the absence of dumping.

Having given these elements careful consideration, the Commissioun found it appropriate in the light of the existing worldwide unused production capacity and excess of production over consumption of urea to determine the amount of the duty at such a level that a representative Community producer is enabled to reach breakeven level on the basis of the costs of production incurred during the period from 1 July 1985 to 30 September 1986. The representative Community producer was chosen by taking into consideration the company's size, the variety, the age and the efficiency of the production installations and the overall production costs. On this basis the Commission determined that the amount of duty should correspond to the amount by which the net free-at-Community frontier price, before duty, is less than 133 ECU per tonne.

(43) A period should be fixed within which the parties concerned may make their views known and request a hearing,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of urea falling within Common Customs Tariff subheadings 31.02 B and ex 31.02 C corresponding to NIMEXE codes 31.02-15 and 31.02-80 and originating in Czechoslovakia, the German Democratic Republic, Kuwait, Libya, Saudi Arabia, the USSR, Trinidad and Tobago and Yugoslavia.

2. The amount of the duty shall be equal to the amount by which the price per tonne net, free-at-Community-frontier, before duty, is less than 133 ECU.

3. The provisions in force concerning customs duties shall apply.

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

*Article 2*

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2176/84, the parties concerned may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

*Article 3*

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 8 May 1987.

*For the Commission*

Willy DE CLERCQ

*Member of the Commission*