I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3339/87

of 4 November 1987

imposing a definitive anti-dumping duty on imports of urea originating in Libya and Saudi Arabia and accepting undertakings given in connection with imports of urea originating in Czechoslovakia, the German Democratic Republic, Kuwait, the USSR, Trinidad and Tobago and Yugoslavia and terminating these investigations

THE COUNCIL 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), as amended by Regulation (EEC) No 1761/87 (2), and in particular Articles 10 and 12 thereof,

Having regard to the proposal submitted by the Commission, after consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PROVISIONAL ACTION

(1) The Commission by Regulation (EEC) No 1289/87 (3), imposed 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. That duty was extended for a maximum period of two months by Regulation (EEC) No 2691/87 (4).

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty the Community producers, several exporters, importers and users of the product concerned requested, and were granted, an opportunity to be heard by the Commission. The Community producers, most of the exporters, some importers and users also made written submissions making known their views on the provisional duty regulation.

(3) Certain exporters and importers also requested to be informed of certain facts and essential consideratins on the basis of which the Commission intended to recommend definitive action and these requests were granted.

(4) In addition to the investigations leading to the provisional determination the Commission carried out further investigations at the premises of the following companies :

EEC producers

Nitrogen Eireann Teoranta (Dublin).

Importers

— Ferchimex NV (Antwerpen), importer related to Sojuzpromexport (USSR),
— USC (Industrial) Ltd (London),
— Cerealtoscana SpA (Altopascio),
— Sadepan Chimica (Viadana),
— SIPA (Paris),
— Unifert France SA (Paris).

C. DUMPING

(i) Normal value

(a) *Saudi Arabia*

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

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No L 167, 26. 6. 1987, p. 9.
(3) OJ No L 121, 9. 5. 1987, p. 11.
(4) OJ No L 254, 5. 9. 1987, p. 20.

(6) For this purpose the sales prices charged by SAFCO to independent customers were used. This approach was adopted because it is considered inappropriate to take account of any transfer price between related companies or branches of any exporter when establishing normal value by means of domestic prices, these prices not being those paid or payable in the ordinary course of trade for the like product. Accordingly, only prices to independent purchasers were used for the determination of normal value.

The evidence gathered 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 a sales company with regard to the product concerned manufactured by SAMAD and has functions similar to that of an internal sales department.

The exporter claimed that because of the differences in the quantities sold on the domestic market and for export to the Community, normal value should be based on a restricted sample of transactions which most resembled the quantities sold for export.

The Council agreed with the Commission that such a claim was tantamount to a claim for allowances to be made for differences allegedly affecting price comparability and that such allowances should only be granted in conformity with the objective criteria laid down in Article 2 (10) of Regulation (EEC) No 2176/84. Therefore, normal value was finally determined on the basis of the prices relating to all domestic transactions during the period under investigation. As for the question of allowances, see recitals 18-21 below.

(7) Given that on the domestic market both treated and untreated urea was sold, normal value was determined separately for each of these types.

(b) *Kuwait*

(8) In seeking to determine the normal value, account was taken of the fact that there were no significant sales of the like product on the domestic market of this country. It was therefore decided that the normal value should be established on the basis of the constructed value.

The constructed value was determined by adding the 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.

For the provisional determination of normal value a profit margin of 10 % had been added to the cost of production. The exporter argued, however, that this margin was too high, given the losses this company and other producers of urea in the world had incurred for a considerable period of time. In fact, it was suggested that for this reason no profit margin should be added.

However, in the light of the clear wording of Article 2 (3) (b) (ii) of Regulation (EEC) No 2176/84 providing that constructed value shall be determined by adding cost of production and a reasonable profit margin, the question is not one of whether or not a profit margin should be added, but rather of what constitutes a reasonable margin of profit. On the basis of the facts available it is considered that it would be unreasonable to add less than 2,5 %, this being the absolute minimum required for the sector concerned in order to allow a producer to earn the funds necessary to maintain a plant in up-to-date technical conditions.

The producer of urea in Kuwait had suggested, as an alternative, that normal value be established on the basis of export prices to third countries rather than on the basis of constructed value. This suggestion could not be followed because it was made at an extremely late stage of the investigation and, given the situation of greatly depressed prices on the world market, it appeared inappropriate to use export prices to third countries. Indeed, under depressed world market prices there is a strong probability that if an exporter dumps on one market, he will also be dumping on other markets.

(c) *Trinidad and Tobago*

(9) In seeking to determine the normal value, account was taken of the fact that there were no significant sales of the like product on the domestic market of this country. It was therefore decided that the normal value should be established on the basis of constructed value.

The constructed value was established by adding the cost of production and a reasonable profit margin. 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.

The producer in Trinidad and Tobago requested that amortization and depreciation be excluded 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 incurred in the ordinary course of trade. This request cannot be granted because these items are normal elements of the costs of production of a company in a market economy country and reflect actual expenses. 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 ot Articles 129 and 185 of the Third ACP-EEC Convention. However, such a request cannot be granted because these Articles are not relevant for the purpose of establishing normal value. Account can only be taken of the stage of development of the exporting country when examining what measures are most appropriate in the Community's interest, 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.

The company also requested that part of the costs relating to the construction of a pier used for the shipment of products including urea be excluded from the final determination of normal value. Given that during the on-the-spot investigation these amounts were found to have been effectively charged to the urea plant during the period under investigation and that afterwards no conclusive evidence to the contrary had been received, such a request could not be granted.

As far as the profit margin was concerned, it was argued that it was unreasonable to stick to the figure of 7 % used for the preliminary determination, mainly because market prices during the period under investigation were depressed and urea producers throughout the world were unable to make profits. For the reasons set out in recital (8) it is considered reasonable to add a profit margin of 2,5 % to the costs of production of the producer in Trinidad and Tobago.

(d) *Yugoslavia*

(10) As a result of the lack of cooperation on the part of the Yugoslav producer at the initial stage of the investigation, the provisional determination of normal value was based on the facts available, i.e. the price payable on the domestic market as alleged in the complaint. Although at a later stage of the investigation the company concerned had offered to cooperate with the Commission, no evidence with regard to normal value was submitted. Therefore the Council confirms the provisional determination made by the Commission.

(e) *Libya*

(11) Given that no comments were made by the producer concerned after the Commission's provisional determination and in the absence of sufficient cooperation and any better information, normal value is finally determined, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84, on the basis of the facts available, i.e. the cost of production put forward in the complaint. With regard to the rate of the profit margin to be added to the costs of production, it is considered appropriate to use the same figure as for the producers in Kuwait and Trinidad and Tobago (see recital (8)).

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

(12) In order to arrive at a provisional determination of normal value the Commission took account of the fact that Czechoslovakia, the German Democratic Republic and the USSR do not have market economies. For the purposes of establishing whether the imports from these countries were dumped, determinations were therefore based on the normal value in a market economy country. In this connection the complainants had suggested the Austrian market.

(13) The Commission, for the reasons set out under recital 16 of Regulation (EEC) No 1289/87, considered, however, that for the purpose of the provisional determination, Saudi Arabia constituted, in this case, an appropriate and not unreasonable choice as an analogue country.

(14) The producers in Czechoslovakia and the USSR did not contest this choice after the imposition of the provisional anti-dumping duty.

The producer in the German Democratic Republic requested that normal value be determined on the basis of its own costs of production structure rather than on the normal value in a market economy third country. However, this request could not be granted because such method does not fall within one of the possibilities provided for under Article 2 (5) of Regulation (EEC) No 2176/84.

The Council therefore confirms the Commission's provisional determination.

(ii) **Export prices**

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

(16) 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. Although in such circumstances the export price is normally constructed, pursuant to Article 2 (8) (b) of Regulation (EEC) No 2176/84, the Commission considered it sufficient for the purpose of a preliminary determination to determine the export price for these transactions on the basis of the invoice value paid by the importer to the exporter. Indeed there was reason to believe that the invoice prices were not very substantially different from the level which would have been reached by constructing the export price.

After the imposition of the provisional anti-dumping duties an on-the-spot investigation took place at the premises of the importer related to the USSR exporter with the primary aim of verifying the prices at which the imported product was first resold by this importer to independent buyers. On the basis of these data export prices were finally constructed pursuant to Article 2 (8) (b) of Regulation (EEC) No 2176/84.

As for the remainder of the exports made during the investigation period by the USSR exporter, i.e. those made to unrelated importers, export prices were finally determined on the basis of prices actually paid.

(iii) **Comparison**

(17) In comparing normal value with export prices, account was taken, where appropriate, of differences affecting price comparability in conformity with the rules laid down in Article 2 (10) of Regulation (EEC) No 2176/84.

(a) *Differences in quantities*

(18) The producer/exporter in Saudi Arabia requested that an allowance be granted pursuant to Article 2 (10) (b) (i) of Regulation (EEC) No 2176/84 in order to take account of the differences in the quantities sold on the domestic market and for exports to the Community. To this end it was suggested that the quantity discount, which was granted on the domestic market for sales of 5 000 tonnes or more, should be applied to all domestic sales in order to make them comparable with the quantities exported.

This request was not granted because no convincing evidence was supplied that all the criteria set out in Article 2 (10) (b) (i) or (ii) of Regulation (EEC) No 2176/84 were met. The Council points out that account had already been taken of differences in quantities when determining normal value on the basis of the weighted average of all prices actually paid and when making adjustments for the differences in the conditions and terms of sale.

(b) *Differences in conditions and terms of sale*

(19) 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, warehousing, salemen's salaries, packaging and handling.

(20) Requests for other adjustments such as differences in technical assistance and publicity were not granted because satisfactory evidence showing that differences in costs were directly related to the sales under consideration was not submitted.

The producer/exporter in Saudi Arabia also requested an additional adjustment for differences in level of trade on the grounds that all sales on the domestic market were made to the end-users, i.e. individual farmers or agricultural companies, except for supplies to one customer who was a large industrial user of urea and who was, in principle, entitled to an additional discount, whereas more than 70 % of shipments to the Community were allegedly for industrial use to customers processing urea into other types of fertilizers.

This request was not granted because it was considered that it was not proven in a satisfactory way that there was a difference in the level of trade since the bulk of the sales, both on the domestic market and on the export side, was made to end-users. Furthermore, it was admitted by the producer/exporter producer/exporter that the customer concerned in Saudi Arabia had not benefited from such discount during the period under investigation.

(21) 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**

(22) 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 examination of the facts showed the existence of dumping in respect of the producers/exporters involved in this proceeding.

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

	%
(a) *Saudi Arabia*	
SAMAD/SAFCO	55
(b) *Kuwait*	
PIC	36
(c) *Trinidad and Tobago*	
NEC	37
(d) *Yugoslavia*	
INA	78
(e) *Libya*	
NAPETCO	58
(f) *Czechoslovakia*	
Petrimex	36
(g) *German Democratic Republic*	
Chemie-Export-Import	51
	%
(h) *USSR*	
Sojuzpromexport	60

D. INJURY

(24) With regard to the injury caused by the dumped imports, the evidence available shows that imports of urea into the Community from Czechoslovakia, the German Democratic Republic, Kuwait, Libya, Saudi Arabia, the USSR, Trinidad and Tobago and Yugoslavia increased from 95 188 tonnes in 1984 to 236 245 tonnes in 1985, i.e. by 148 %. During the first nine months of 1986 these imports amounted to 722 455 tonnes. Over the full year 1986 these imports amounted to 1 034 051 tonnes, representing an increase of 338 % compared with 1985.

The imports (in tonnes) from each of the countries involved in these proceedings increased between 1984 and 1986 as follows :

	1984	1985	1986 (9 months)	1986 (full year)
Czechoslovakia	34 257	33 621	30 951	42 631
German Democratic Republic	33 771	26 180	72 274	89 739
Kuwait	—	11 212	46 709	46 710
Libya	2 188	15 252	182 369	284 303
Saudi Arabia	—	20 000	110 475	110 475
USSR(1)	9 223	77 650	154 834	270 849
Trinidad and Tobago	—	30 209	94 871	147 936
Yugoslavia	15 749	22 121	29 972	41 408

(1) According to the figures submitted by the USSR exporter, the exports had been even higher, in particular in 1985. However, no conclusive evidence was received.

(25) This development represented an increase in the market share held by these countries in the Community from 2,45 % in 1984 to 5,85 % in 1985 and to 20,28 % during the first nine months of 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 3,48 % in 1984 to 8,20 % in 1985 and to 26,29 % during the first nine months of 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 4,06 % in 1984 to 9,37 % in 1985 and to 29 % during the first nine months of 1986.

(26) 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 108 000 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

68 000 tonnes of dumped products. These transactions took place mainly because one of the Community 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 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, the Commission, in its preliminary determination, 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 Council notes that the quantity imported and resold by these producers represented a minor share (0,61 % and 5,34 % 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 0,29 % and 2,06 % respectively of the total consumption in the Community, was resold at particularly low prices. Insofar as injury was caused to Community producers by these low priced sales, the Council considered that this injury was self-inflicted. Given the limited importance of the transactions in question and the fact that the bulk of the imports made by Community producers were resold at prices corresponding to the producers' own prices, the Council took the view that the producers in question should not be excluded from the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2176/84. However, since the Portuguese producer had no significant production of its own in 1986, the Council considered it appropriate to exclude this company from the injury assessment.

Several parties interested in the outcome of these proceedings argued that, account should be taken of dumped imports by Community producers after the end of the investigation period. This argument has to be rejected since it would be contrary to Article 7 (1) (c) of Regulation (EEC) No 2176/84, which provides that the investigation of dumping shall cover the period prior to the initiation of the proceeding, to take into consideration dumped imports made after the end of the investigation period.

(27) 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 increased from 2 737 503 tonnes to 3 734 977 tonnes, i.e. by approximately 36 % on the free market and from 2 108 503 tonnes to 3 054 009 tonnes, i.e. by approximately 44 % for agricultural purposes.

When examining the impact of the dumped imports 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 (i.e. total production minus captive use) 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 preceding years.

(28) As far as the capacity utilisation 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 utilisation relating to the production of urea for the free market only were not available because figures relating to production capacity were not distinguished according to future uses of the product.

(29) Total sales in the Community of urea manufacrured 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 producers 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 (1984 — 1986).

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).

(30) The share of the non-captive urea market in the Community held by the Community producers amounted to 89 % in 1984. In 1985 it decreased to 85,27 % 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 from approximately 87 % in 1984 to approximately 83 % in 1985 and to approximately 61 % 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 approximately 95 % and approximately 88 % respectively in 1984 to approximately 74 % and approximately #cp53,2#decreased 71 % during the first nine months of 1986.

In the United Kingdom the market share held by the domestic producer of the freely available urea market decreased from approximately 44 % in 1984 to approximately 39 % during the first nine months of 1986. In Ireland the market share held by the domestic producer decreased from approximately 78 % in 1984 to approximately 54 % during the first nine months of 1986. This development reflects the fact that the Community producers could not take advantage of the increased consumption which was totally absorbed by the dumped imports.

(31) As far as prices and profitability are concerned, it was considered 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.

Considering that the findings relating to the Italian and French markets laid out in recitals 31 to 32 of Regulation (EEC) No 1289/87 were not significantly disputed after the imposition of the provisional anti-dumping duty, the Council confirms these findings.

(32) After the imposition of the provisional duty the Commission further investigated the position of the Community producers in the United Kingdom and Ireland representing 6,4 % and 4 % respectively of the agricultural urea market in the Community.

With regard to the domestic producer in the United Kingdom, it was found that costs of production (per unit) in 1985 were 105 % higher than in 1984 whereas the average net sales price increased by approximately 13 % within the same period. 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 remained relatively stable whilst the average net price per unit after discounts had fallen by 17 %. It was also found that its sales prices before discounts on the home market had fallen by 14,9 % between 1 July 1985 and 30 June 1986, leading to a significant decrease in profitability. It was found that this producer started incurring losses in 1985 and the losses increased drastically during the first nine months of 1986. In addition a weighted average margin of price undercutting of 4,8 % was found with regard to sales during the period under investigation.

In Ireland the sales prices of the sole domestic producer fell by 14,3 % between January 1986 and June 1986, the period in which the dumped imports first achieved a significant market share and the Irish producer's sales decreased correspondingly. Weighted average margins of price undercutting varying between 18 % and 23 % were also found on this market.

For this producer, costs of production rose by 41,6 % between 1984 and 1985 whereas net sales prices on the domestic market increased by 7,5 %. During the first nine months of 1986, the cost of production per unit had decreased by 20,4 % compared with the same period in 1985 whilst the average unit sales price after discounts had fallen by 26,9 %.

As far as the profitability of this producer is concerned, profits were found to have fallen by approximately 17 % in 1985 and approximately 7 % in the first nine months of 1986.

(33) With regard to the prices and profitability of producers in Spain, the Council confirms the position taken by the Commission in recital 33 of Regulation (EEC) No 1289/87 which has not been contested.

(34) In establishing the impact of the dumped imports on the Community industry the effects of all dumped imports from all countries concerned were considered. In analysing whether aggregation 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, the extent to which each of the imported products competed in the Community with the like product of the Community industry, the volumes imported and the increase in volume of imports since 1984 from each of the exporting countries.

With regard to the comparability of the imported products, which were mainly in prilled form, it was found that both within the agricultural and technical sectors, the products were used interchangeably irrespective of the country of origin, the chemical and physical characteristics of the products concerned being very similar. It was also found that the product originating in each of the exporting countries involved in these proceedings competed with the Community product.

As 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 granulated urea 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. Firstly, 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 not higher than that charged during the same period by most other exporters involved in this proceeding.

As far as the volumes of the dumped imports are concerned, and in particular their increase between 1984 and 1986, the following development took place :

— Czechoslovakia	+ 24 %
— German Democratic Republic	+ 165 %
— Libya	+ 12 893 %
— USSR	+ 2 836 %
— Yugoslavia	+ 162 %

With regard to the newcomers on the market, i.e. Kuwait, Saudi Arabia and Trinidad and Tobago, who started exporting to the Community in 1985, their exports increased between 1985 and 1986 as follows :

— Kuwait	+ 316 %
— Saudi Arabia	+ 452 %
— Trinidad and Tobago	+ 389 %

On the basis of such analysis the Commission concluded that for the purpose of assessing the injury sustained by the Community industry, regard should be paid to the effect of the dumped imports aggregated from all exporting countries concerned.

The Council confirms these findings and conclusions.

(35) Under these circumstances the Council finds that the Community industry is materially injured by reason of the dumped imports.

(36) Examination took place to see whether injury had been caused by other factors such as the worldwide glut of urea which, according to a number of exporters and importers, had led to overall price depression and to a loss of export markets for the Community producers. 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 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.

It was also found, that due to increased production capacity in third countries, Community producers lost part of their export markets. Therefore, the impact of the dumped imports has been even more strongly felt by the Community industry. In addition, account has to be taken of the fact that it was the dumped imports alone that entirely captured the increase in consumption which took place within the Community over the last three years (see recital (27)).

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. Since urea is a very price sensitive product, these producers had also to align their final sales prices on those of the dumped imports by retroactively granting rebates. No significant sales by other Community producers took place in Italy.

As to imports from third countries not involved in these proceedings which took place 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 these countries did not hold market shares important enough to contribute significantly to the alleged injury and they, therefore, were not included in the original proceedings.

It was also argued that account should be taken of imports from third counties not involved in the proceedings, but which had significantly increased after the initiation of the present proceedings. In this respect the Commission received, in September 1987, a request from the complainant asking that imports from Austria, Hungary, Malaysia, Romania, the USA and Venezuela be included in the present anti-dumping proceeding. To this end the Commission published a notice [1] extending the proceedings.

(37) 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 Council confirms the fact that, although prices for a particular product are depressed outside the Community, that does not constitute any justification whatsoever for exporters to sell their products at dumped prices within the Community nor does it constitute a reason for not protecting the Community industry if and when it has been established that it suffered material injury because of dumped imports.

(38) The Council took into account the facts mentioned above and considered that the substantial increase in dumped imports and the particularly low prices at which they were offered for sale in the Community were major factors 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 or no importance, low priced offers from outside are bound to have serious adverse effects on the domestic industry, more especially in this case as producers are deprived of the benefit of increased consumption. This led the Council 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 considered as causing material injury to the Community industry concerned.

[1] OJ No 271, 9. 10. 1987, p. 4.

E. COMMUNITY INTEREST

(39) Farmers' 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.

Spanish users of the technical type of urea (used for the production of glues and resins) put forward the argument that technical urea should be excluded from any definitive measure because protective measures would have a serious impact on the production of glues and resins in Spain as well as on the users of these derived products such as the manufacturers of particle board. However, the present proceedings concern imports into the entire Community and not only into Spain. Similar submissions from users of technical urea in other Member States had not been made. Also, the exclusion of imports of a particular type of the product concerned in one Member State would be very difficult, if not impossible, to operate for reasons of customs control.

Furthermore, it has not been proven that the disadvantages to users of urea (agricultural and technical) which might result from taking protective measures would outweigh the benefits to the Community which would result from the introduction of protective measures aimed at creating market conditions under which Community producers of urea would be able to produce and sell the product concened in the Community without incurring major losses due to large imports at dumped prices.

(40) It was also argued that protective measures would discourage Community producers of urea from reducing their sales prices of the product concerned to reflect 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.

One exporter argued that anti-dumping measures might, in the present case, have a counter-productive effect because, due to the expected reduced imports into the Community, competition on third markets would increase and therefore lead to a further loss of exports for Community producers. The Council considered that it was difficult, if not impossible, to predict whether or not protective measures would have negative effects on the export activities of Community producers.

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

The Council considered that, although good relation 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.

(42) 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 definitive action be taken.

The Council confirms this conclusion.

F. UNDERTAKINGS

(43) The following producers/exporters offered undertakings pursuant to Article 10 of Regulation (EEC) No 2176/84 :

— Czechoslovakia :

Petrimex Foreign Trade Company Ltd (Bratislava),

— the German Democratic Republic :

Chemie-Export-Import (Berlin),

— Trinidad and Tobago :

National Energy Corporation of Trinidad and Tobago Ltd (Port of Spain),

— Kuwait :

Petrochemical Industry Company (Kuwait),

— USSR :

Sojuzpromexport (Moscow),

— Yugoslavia :

INA-Petrokemija (Kutina) and INA Commerce (Zagreb).

These undertakings were acceptable to the Commission on the grounds that they were considered to provide adequate relief to the Community industry because they will reduce future imports of urea from these countries to a reasonable share of

the Community consumption of urea. Furthermore, such remedies are also, in so far as they relate to developing countries, in conformity with Article 13 of the GATT Anti-dumping Code.

G. DEFINITIVE DUTY

(44) With regard to the product concerned originating in Libya and Saudi Arabia, the action should take the form of definitive anti-dumping duties.

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

(45) In order to determine the amount of duty necessary to eliminate the injury suffered by the Community industry, the Council considered, in particular, the selling price necessary to cover the cost of production incurred during the period from 1 July 1985

Chemie-Export-Import 30 September 1986 and to provide an adequate profit margin to the Community industry and the gap between this target and the import prices of dumped urea in the Community.

Having given these elements careful consideration, the Commission found it appropriate for Regulation (EEC) No 1289/87 to determine the amount of the duty at such a level that a representative Community producer was enabled to reach break-even level on the basis of the costs of production incurred during the period from 1 July 1985 to 30 September 1986. The Community industry argued, however, that this was unjustified because in order to make new investments a producer of urea or a similar product would normally need a profit margin of at least 15 %. In view of the nature of the product concerned, the Council considered, however, that it would not be justified to add such a profit margin to the cost production. It was therefore considered reasonable to add a profit margin of 2,5 %, which appears necessary to enable a producer of urea to maintain a plant in up-to-date technical conditions. 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 calculated the following rates of duty on the net, free-at-Community frontier rice, before duty :

— Czechoslovakia : 19,5 %,
— German Democratic Republic : 17,5 %,
— Kuwait : 17,5 %,
— Libya : 34 %,
— Saudi Arabia : 40 %,
— USSR 45,9 %.

(46) Since the abovementioned exporters in Czechoslovakia, the German Democratic Republic and the USSR are the exclusive exporters of urea from these countries, and their undertakings cover all exports of the product originating in these countries, all imports of urea originating in Czechoslovakia, the German Democratic Republic and the USSR can be excluded from the definitive duty.

As far as imports of urea originating in Kuwait, Trinidad and Tobago and Yugoslavia are concerned, it was found that the exporters investigated actually constituted the sole exporters to the Community and that it is unlikely that in these countries other exporters will start exporting to the Community. Therefore, these countries may also be excluded from the definitive anti-dumping duty.

H. COLLECTION OF PROVISIONAL DUTY

(47) In view of the importance of the dumping margins found and the seriousness of the injury caused to the Community producers, the Council considers it necessary that amounts secured by way of provisional anti-dumping duty shall be collected, either in full or to a maximum of the duty definitively imposed in these cases where the amount of the definitive duty is less than the amount of the provisional duty. However, collection is considered inappropriate with regard to the products originating in Trinidad and Tobago and Yugoslavia in order to provide for special and differential treatment contemplated by Article 13 of the GATT Anti-dumping Code.

I. PROCEDURE

(48) As certain objections were raised in the Advisory Committee with regard to the acceptance by the Commission of undertakings offered by exporters, a proposal on that matter was submitted by the Commission to the Council.

(49) The Council has noted that other proceedings have, in the meantime, been opened involving the same product originating in other countries (see recital (36)). The Council, therefore, considers that the present measures are, on that account, of a transitional nature and will have to be re-examined at the end of the pending proceedings.

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive 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 Libya and Saudi Arabia.

2 The rates of the definitive anti-dumping duty on the net, free-at-Community-frontier price, before duty, shall be as follows :

— Libya : 34 %,

— Saudi Arabia : 40 %.

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

Article 2

1. The undertakings offered by the companies listed below are herewith accepted :

— Czechoslovakia :
Petrimex Foreign Trade Company Ltd (Bratislava),

— the German Democratic Republic :
Chemie-Export-Import (Berlin),

— Trinidad and Tobago :
National Energy Corporation of Trinidad and Tobago Ltd (Port of Spain),

— Kuwait :
Petrochemical Industry Company (Kuwait),

— the USSR :
Sojuzpromexport (Moscow),

— Yugoslavia :
INA-Petrokemija (Kutina) and INA Commerce (Zagreb).

2. The investigations with regard to imports of urea originating in Czechoslovakia, the German Democratic Republic, Kuwait, Trinidad and Tobago, the USSR and Yugoslavia are hereby terminated.

Article 3

1. The amounts secured by way of a provisional anti-dumping duty under Regulation (EEC) No 1289/87 with regard to imports of urea originating in Libya and Saudi Arabia shall be collected up to the amounts defined in accordance with Article 1 (2).

2. The amounts secured by way of a provisional anti-dumping duty under Regulation (EEC) No 1289/87 with regard to imports of urea originating in Czechoslovakia, the German Democratic Republic, Kuwait and the USSR shall be collected up to the amounts not exceeding the following percentages on the net, free-at-Community frontier price, before duty, namely :

— Czechoslovakia :	19,5 %,
— German Democratic Republic :	17,5 %,
— Kuwait :	17,5 %,
— USSR :	45,9 %.

3. The amounts secured by way of a provisional anti-dumping duty under Regulation (EEC) No 1289/87 with regard to imports of urea originating in Trinidad and Tobago and Yugoslavia shall be released.

Article 4

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, 4 November 1987.

For the Council

The President

U. ELLEMANN-JENSEN