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(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 477/95**

of 16 January 1995

**amending the definitive anti-dumping measures applying to imports into the Community of urea originating in the former USSR and terminating the anti-dumping measures applying to imports into the Community of urea originating in the former Czechoslovakia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community<sup>(1)</sup>, and in particular Articles 12, 14 and 15 thereof,

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

Whereas :

**A. PROCEDURE**

- (1) By Regulation (EEC) No 3339/87<sup>(2)</sup> the Council accepted undertakings in respect of imports of urea from, amongst others, the USSR and Czechoslovakia.
- (2) By Commission Decision 89/143/EEC<sup>(3)</sup> of 21 February 1989, the undertakings accepted by Regulation (EEC) No 3339/87 were confirmed.
- (3) During 1992, information available to the Commission indicated that the quantity of imports from these countries was significantly greater than the quantities provided for in the undertakings. Accordingly, the Commission considered a review of the measures was warranted and published a

Notice of initiation to this effect in the *Official Journal of the European Communities*<sup>(4)</sup>.

- (4) As the review proceeding was still in progress beyond the normal period of expiry of the measures, the Commission gave notice<sup>(5)</sup> in accordance with Article 15 (4) of Regulation (EEC) No 2423/88 that the measures concerning urea originating in the former USSR and the former Czechoslovakia would remain in force after the end of the relevant five-year period, pending the outcome of the review.
- (5) The countries concerned by this review are the new republics of the former Czechoslovakia (i.e. the Czech Republic and the Slovak Republic) and those republics of the former USSR in which there was reason to believe urea production facilities exist, namely the Republics of Belarus, Georgia, Tajikistan and Uzbekistan, the Russian Federation (referred to hereafter as 'Russia') and Ukraine.
- (6) The Commission officially notified the Community producers, exporters and importers known to be concerned and the representatives of the exporting countries of the initiation of the proceeding and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.
- (7) Representatives of the European Fertilizer Manufacturers Association (hereafter referred to as 'EFMA') were granted a hearing and made their views known in writing.
- (8) Representatives of the European Fertilizer Importers Association (hereafter referred to as 'EFIA') whose members import urea from the countries concerned, were also granted a hearing and made their views known in writing.

<sup>(1)</sup> OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

<sup>(2)</sup> OJ No L 317, 7. 11. 1987, p. 1.

<sup>(3)</sup> OJ No L 52, 24. 2. 1989, p. 37.

<sup>(4)</sup> OJ No C 87, 27. 3. 1993, p. 7.

<sup>(5)</sup> OJ No C 47, 15. 2. 1994, p. 3.

(9) The Commission sought and verified all the information it deemed to be necessary for the purpose of its investigation and visited the premises of the following companies :

(a) *Community producers :*

- Hydro Agri GmbH, Brunsbuettel, Germany,
- Stickstoffwerke AG, Wittenberg-Piesteritz, Germany,
- Fertilizantes Enfersa, SA, Madrid, Spain,
- FESA Fertilizantes Españoles, SA, Madrid, Spain,
- Grande Paroisse SA, Paris, France,
- Irish Fertilizer Industry Ltd, Dublin, Ireland,
- Enichem Agricoltura, SpA, Milan, Italy,
- DSM Meststoffen BV, Sittard, Netherlands,
- Kemira BV, Rotterdam, Netherlands ;

(b) *Producer/exporter in the Czech Republic :*

- Chemopetrol s.p., Litvinov ;

(c) *Producers/exporters in the Slovak Republic :*

- Duslo s.p., Sala (producer/exporter),
- Petrimex Foreign Trade Company Ltd, Bratislava (exporter and former Czechoslovakian export monopoly holder) ;

(d) *Importers in the Community :*

- Interore SA, Brussels, Belgium,
- Unifert SA, Brussels, Belgium,
- Champagne Fertilisants SA, Reims, France.

(10) The Commission received and used information from four other Community producers which had replied to the relevant questionnaire.

(11) With regard to producers in Belarus, Georgia, Russia, Tajikistan, Ukraine and Uzbekistan, information supplied indicated that there were a total of 24 plants in these countries known or thought to produce urea. Questionnaires requesting information were sent to all these producers, however, reactions were only received from three of them. Of these three, two were producers situated in Russia and both stated that they did not export urea to the Community during the investigation period. The third producer, the only known fertilizer manufacturer in Georgia, said it had ceased urea production some years ago.

(12) The investigation of dumping covered the period from 1 January 1992 to 31 December 1992 (the 'investigation period').

(13) All the parties concerned were informed of the essential facts and considerations on the basis of

which it was intended to recommend the imposition of definitive measures. They were also granted a period within which to make representations subsequent to these disclosures.

(14) Some of the parties concerned submitted that they had not been provided with sufficient detailed information by the Commission concerning the calculation of dumping margins and injury elimination levels and that this might affect their ability to defend their interests.

(15) As regards disclosure, exporters were informed of details of how their individual dumping margins were calculated and the injury elimination levels established. Community producers were supplied with details of average Community producers' sales prices, undercutting, profit levels, and any injury elimination level established ; importers received disclosure of detailed information on all aspects of the investigation and of the reasons on the basis of which it was intended to recommend the imposition of definitive duties.

Thus, in the Commission's view, each interested party received, within the constraints laid down in Article 8 of Regulation (EEC) No 2423/88, all available information required for the party concerned to protect its interests and relevant for its defence.

## B. PRODUCT UNDER CONSIDERATION

### 1. Production description

(16) The product concerned is urea. It is produced from ammonia, which in turn is produced mainly from natural gas, although it can also be produced from the waste products of oil refining. When in solid form, it is either in small 'granules' (which have a rough surface) or small 'prills' (which are also granular but have a smooth surface). Solid urea can also be mixed with water to make 'liquid' urea.

(17) Urea in granular and prilled forms can be used for both agricultural and industrial purposes :

- agricultural grade urea can be used either as a fertilizer which is spread onto the soil or as an animal feed additive,
- industrial (or 'technical') grade urea is a raw material for certain glues and plastics.

Liquid urea can be used both as a fertilizer and for industrial purposes. Although urea is presented in the different forms mentioned above, its chemical properties remain basically the same and may be regarded for the purposes of the present proceeding as one product.

## 2. Like product

- (18) It was established that urea produced and sold by the Community industry on the Community market is a like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 as regards its physical and technical characteristics when compared with the urea produced by the countries concerned in this proceeding.

## C. COMMUNITY INDUSTRY

- (19) The investigation showed that the producers which cooperated in the investigation accounted for the entire production of urea in the Community and may therefore, in accordance with Article 4 (5) of Regulation (EEC) No 2423/88, be considered as the Community industry.

## D. DUMPING

### 1. Czech Republic and Slovak Republic

#### (a) *General*

- (20) Following the division of Czechoslovakia into the Czech Republic and the Slovak Republic at the beginning of 1993, each of these new countries has one urea production company situated within its borders.
- (21) Since 1 March 1992, Czechoslovakia and, latterly, the Czech Republic and the Slovak Republic, have been considered as market economies. Accordingly, normal value was established using data relating to the domestic sales prices and production costs of each producer. It should be noted that during the investigation period, Czechoslovakia had not yet become two independent countries, therefore any reference to Czech or Slovak 'domestic' sales prices in this Regulation means sales prices in the former Czechoslovakia.
- (22) Given that the two countries were coming through the transitional stage between centrally planned and free market economies at the time of the investigation, particular attention was paid to the question of whether the prices and costs of the producers were still influenced by the continuation of historical links between State-owned companies. Such links may have resulted in prices and costs not being capable of being considered in the ordi-

nary course of trade and may have necessitated an appropriate adjustment of normal value. In the present case, however, this was not considered necessary following analysis of the producers' accounting data.

- (23) Historically, the two production companies have always maintained their own accounting records and organized their own domestic sales of urea. With regard to export sales, even prior to the division of Czechoslovakia into two separate Republics, the two production companies always knew the final destination of their goods. It is therefore possible to determine domestic prices in Czechoslovakia and export prices for each producer separately.

#### (b) *Normal value*

- (24) In accordance with Article 2 (3) (a) of Regulation (EEC) No 2423/88, normal value was established on the basis of the price actually paid in the ordinary course of trade for domestic sales of the like product, which were made in sufficient quantities to permit a proper comparison. To determine that such sales were profitable, the costs of production data provided were analysed.

It was first necessary, however, to establish whether the data were both reliable and in accordance with acceptable accounting standards. Examination of the Czech and Slovak producers' records showed that costs had been kept on a cost centre basis and that, in particular, depreciation had been taken into account as well as financing costs. With regard to purchases of raw materials, it was found that the Slovak producer had purchased its gas from Russia at open market prices. The Czech producer did not use natural gas as a raw material but instead produced urea from the waste products of oil refining.

- (25) It was established that domestic prices were profitable. Consequently, normal value was calculated on the basis of each producer's weighted average net domestic sales price of agricultural and industrial prilled urea sold in the ordinary course of trade during 1992.

#### (c) *Export price*

- (26) In the case of direct sales made by the Czech and Slovak producers to customers in the Community, export prices were established on the basis of the prices paid or payable, to the producer concerned.

(27) In addition to direct sales to the Community, the Czech and Slovak producers both made some export sales during the investigation period to customers in the Community via the former Czechoslovakian export monopoly holder, Petrimex Foreign Trade Company Ltd (hereafter called 'Petrimex'). In such cases, the net price at which the production companies sold the urea to Petrimex has been considered as the export price within the meaning of Article 2 (8) (a) of Regulation (EEC) No 2423/88, taking into consideration the fact that the ultimate destination of the goods was known to the manufacturer at the time of their delivery and that normal value has been established at a corresponding level.

(d) *Comparison*

(28) In accordance with Article 2 (10) (c) of Regulation (EEC) No 2423/88, adjustments were made, where appropriate, to both normal value and export price in order to take account of directly related selling expenses and enable them to be compared at the same level. These adjustments included transport and related costs, packing costs and commissions.

(29) A comparison was then made between normal value (ex-works) and export price (ex-works) on a transaction-by-transaction basis.

(e) *Dumping margins*

(30) The dumping margins, expressed as percentages of the price, free-at-Community-frontier, were as follows :

- Czech Republic : Duslo s.p. 0,7 %,
- Slovak Republic : Chemopetrol s.p. 11,8 %.

**2. Republics of Belarus, Georgia, Russia, Tajikistan, Ukraine and Uzbekistan**

(a) *General*

(31) In view of the non-cooperation of the majority of the producers/exporters in Belarus, Georgia, Russia, Tajikistan, Ukraine and Uzbekistan, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88 the facts available have been used to examine the question of dumping.

(32) To this end, consideration was given as to whether Eurostat data could be used for establishing export prices for these countries. A problem arose, however, in view of the fact that prior to January 1992 only one geo-nomenclature Eurostat code existed for the USSR (including the three Baltic States of Estonia, Latvia and Lithuania). From

January 1992 onwards, separate codes were created for these Baltic States, however the other Republics of the former USSR continued to be grouped together under one code.

It was only in mid-1992 that separate statistical import codes for Belarus, Georgia, Russia, Tajikistan, Ukraine and Uzbekistan were established. Available Eurostat data for the second half of 1992 show that no imports into the Community were made from Belarus, Georgia, Tajikistan and Uzbekistan (with the exception of a negligible quantity of 119 tonnes from Belarus).

(33) During the course of the investigation, the Community producers and importers also indicated that most of the urea exported from the former USSR was of Russian origin. In addition, the Ministry of Foreign Affairs of Uzbekistan informed the Commission that no exports of urea had been made to the Community in 1992 by any of the Uzbek producers. With regard to Georgia, as mentioned previously in this Regulation, the only known producer of urea in that country stated that it ceased urea production some years ago.

(34) For these reasons and for the purposes of the current review proceeding, it has been concluded that none of the urea imports under the geo-nomenclature code 'USSR' in Eurostat during the first part of 1992 should be attributed to Belarus, Georgia, Tajikistan or Uzbekistan. Accordingly, these four countries are to be excluded from the examination of dumping.

(35) With regard to establishing separate import volumes for Russia and Ukraine, the individual ratios found for these two countries in respect of their imports during the second part of 1992 were also applied to the 'USSR' import volume during the first part of 1992. For previous years, the same ratios of import volumes from Russia and Ukraine found in 1992 were also applied to establish separate import volumes.

(b) *Normal value (Russia and Ukraine) — choice of analogue country*

(36) In order to establish the normal value of urea produced in Russia and Ukraine, account was taken of the fact that these countries do not have market economies. In accordance, therefore, with Article 2 (5) of Regulation (EEC) No 2423/88, a determination of normal value had to be based on the conditions in a market economy country (the 'analogue' country).

- (37) With regard to the choice of an analogue country, Australia was suggested by EFMA. On the other hand, EFIA objected to the use of any analogue country and proposed that the actual costs in the countries concerned by the proceeding be used instead.
- (38) In view of the lack of alternatives, contact was made with the sole Australian producer of urea and this company agreed to cooperate with the investigation. At a later stage in the proceeding, EFIA submitted that Canada was a more suitable analogue country and provided data concerning urea production there.

As the suggestion to use Canada as an analogue country had come late and, in order not to unduly delay the length of the investigation at that time, it was decided to proceed using Australia as the provisional analogue country.

- (39) The investigation revealed, however, that Australia was not the most appropriate choice of analogue country given its isolated position in relation to the world markets and also the fact that domestic sales prices were higher than those prevailing in Europe.
- (40) As the Slovak Republic had already been investigated and the data provided by the producer there verified, consideration was given to using this country as the analogue country.
- (41) The investigation had revealed that the Slovak producer's production process was based on natural gas, as are the Russian and Ukrainian manufacturers. Moreover, the Slovak producer bought its gas from Russia at open market prices. In view also of the fact that the Slovak sales prices reflected the real cost of production under market economy conditions and that there was a substantial domestic market, the Slovak Republic was considered to be an appropriate analogue country for establishing normal value for Russia and Ukraine.
- (42) Certain parties concerned objected to this and argued that Slovakia was inappropriate due to its small production volume in comparison to that of the USSR. Moreover, because of its reliance on Russian gas, it was alleged that production costs were not comparable. The investigation showed, however, that although Russia has large production capacity, its exports to the Community are broadly similar to the level of production in Slovakia. Furthermore, the sole Slovak producer bought the basic raw material — gas — at open market prices from Russia. The requirement to establish normal value at market economy conditions was therefore duly respected.

Following disclosure to all the interested parties of the essential facts and considerations upon which it was intended to propose measures, the Russian authorities, although admitting that there are similarities between their urea production process and that of the Slovak producer, suggested that Canada should be used as the analogue country in this particular case. This request came extremely late in the proceeding despite the invitation made in the Notice of Initiation for comments concerning the selection of the analogue country. Therefore, the Slovak Republic is still considered to be an appropriate analogue country for the reasons stated above.

(c) *Normal value (Russia and Ukraine) — calculation*

- (43) As already established in recital 25, when compared to the cost of production data, the weighted average net domestic sales price in 1992 of Slovak-produced agricultural and industrial prilled urea yielded a profit overall. Consequently, in accordance with Article 2 (5) (a) (i) of Regulation (EEC) No 2423/88, normal value for Russia and Ukraine has been based on the ex-works sales prices of the Slovak producer on the Czechoslovakian market during the investigation period.

(d) *Export price*

- (44) With regard to establishing the export price, the Ministry of Foreign Economic Relations of the Russian Federation submitted that the calculations should be made separately for each of the two Combined Nomenclature (CN) codes under which Russian urea is imported. Furthermore, EFIA submitted that the comparison between prices of Russian and Community urea should be made separately for agricultural and industrial grades.
- (45) In this context, all urea has been considered one product (see recital 17) and it should be noted that no information concerning Russian or Ukrainian exports has been provided by the producers/exporters in these countries. Moreover, the importers of urea which cooperated with the investigation and which purchased the product directly from the countries concerned only accounted for approximately 1,5 % of the total imports of urea from Russia and Ukraine during the investigation period.

In view of this and in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88, the facts available were used to calculate export prices. Eurostat data, which comprise all forms and grades of urea, has been used in the determination of export prices being considered the most reasonable facts available.

(46) It was considered that the most reasonable basis for establishing export prices was to take the cif Eurostat import values for the combined nomenclature codes in question and adjust them to Russian and Ukrainian frontier prices. Certain interested parties contested this approach and submitted that a more accurate method would be to calculate the ex-works price in Russia and Ukraine. This argument cannot be accepted as, in non-market economies, the siting of industrial production facilities (such as those for urea) need not be determined by free-market considerations such as access to transport facilities, proximity to raw material sources or user markets, etc. Furthermore, costs, including transport costs, in such economies are not governed by market forces. Accordingly, the view has been taken that export prices should be calculated at ex-frontier level in this particular case.

#### (e) Comparison

(47) Normal value in the Slovak Republic was compared with the export price as established in recital 46 for Russia and Ukraine. For the purpose of ensuring a fair comparison, the Commission first examined the question of whether there were physical or technical differences between the Slovak product and urea manufactured in Russia and the Ukraine. No differences were found, therefore no adjustments to the normal value or export prices on these grounds were necessary.

(48) The Commission was requested to address the question of whether an adjustment to the normal value was necessary in order to take account of the difference in the price paid for Russian gas by the urea producer in the Slovak Republic and the price paid for Russian gas by urea producers in Russia and Ukraine. To this end, it was found that the Slovak producer had paid the free market price to Russia for its gas while producers in Russia and Ukraine, it is believed, paid considerably less.

(49) Nevertheless, for the purposes of making a correct comparison between normal value in the Slovak Republic and export prices in Russia and Ukraine, any difference is irrelevant as these two countries were not considered as market economies during the investigation period and therefore their raw material costs were not governed by market forces. Thus, no adjustments were made to the normal value for reasons of differences in raw material costs.

(50) The question of whether an adjustment to the normal value was necessary to take account of the costs of sending gas by pipeline from Russia to the Slovak Republic was also considered. The view has

been taken that no adjustment is necessary as the majority of Russian and Ukrainian urea producers are situated considerable distances away from the gas fields. It follows that, if the costs in these countries had been governed by market forces, Russian and Ukrainian urea producers would also, like the Slovak producer, have incurred costs for piping gas to the production sites.

(51) Normal value and export prices were, however, adjusted to take account of certain of the selling expenses listed in Article 2 (10) (c) of Regulation (EEC) No 2423/88. Such adjustments were made, where appropriate, for transport and insurance costs.

(52) In particular, the cif Eurostat imports values were adjusted to Russian and Ukrainian frontier prices. This was achieved by deducting a certain amount for freight and insurance costs which were derived from the data supplied by the cooperating importers.

(53) A comparison was then made, at the same level of trade, between normal value (ex-works) in the Slovak Republic and export prices (ex-frontier) for Russia and Ukraine respectively.

#### (f) Dumping margins

(54) The dumping margins, expressed as percentages on the cif price, free-at-Community frontier, were as follows:

- Russia: 28,2 %,
- Ukraine: 20,4 %.

## E. INJURY

### 1. Preliminary considerations

(55) The Commission has established that during the investigation period the only producer in the Czech Republic was dumping at a rate of 0,7 %. It was considered that this dumping margin is *de minimis* for the purpose of the present proceeding. It follows, therefore, that it was not necessary to examine the question of whether imports originating in the Czech Republic have caused injury to the Community industry.

(56) With regard to the Republics of Belarus, Georgia, Tajikistan and Uzbekistan, it should be remembered that these four countries were excluded from the examination of dumping on the grounds of no exports or negligible exports to the Community. It follows that these four countries are also to be excluded from the examination of injury in the present proceeding.

## 2. Volume and market shares of dumped imports

### (a) Community consumption

- (57) In calculating the total consumption of all types of urea in the Community (agricultural, industrial, prilled, granules, in liquid form, etc.), the Commission added the total Community urea sales of the Community producers to the total imports into the Community of all types of urea from all sources. On the basis, Community consumption of urea declined by 2,7 % between 1989 and the investigation period.

### (b) Former Czechoslovakia

- (58) On the basis of information contained in Eurostat, the Commission found that declared imports of Czechoslovakian origin apparently stood at 134 930 tonnes during the investigation period. However, the Commission's investigation at the premises of the Czech and Slovak producer showed that they had only exported a combined total of 84 504 tonnes to the Community. Information received from two separate sources indicated that the difference of 50 426 tonnes comprised urea of Ukrainian origin which was transhipped through Czechoslovakia by newly formed trading houses and incorrectly attributed with Czechoslovakian origin on importation into the Community. A similar situation occurred in 1991 when the quantities involved were approximately 14 000 tonnes.
- (59) Accordingly, for the purposes of calculating the volume of dumped imports and market shares, the Commission has treated the difference in quantities referred to above as being urea originating in Ukraine and has attributed the said quantities to import data relating to Ukraine. The Ukrainian authorities were advised of these findings and raised no objections. All data concerning exports made by the Czech or Slovak producers thereof reflects their actual level of exports to the Community.

### (c) The Slovak Republic

- (60) It has been established that dumped imports of Slovakian origin increased by 77 % between 1989 and the investigation period. The market share, however, of such imports rose from 0,3 % in 1989 to 0,5 % during the investigation period. Given this negligible market share, it is considered that there are insufficient grounds to cumulate imports originating in the Slovak Republic. It follows that the

question of whether imports from the Slovak Republic have caused injury need not be addressed.

### (d) Ukraine

- (61) The investigation has shown that dumped imports of Ukrainian origin rose between 1989 and the investigation period with a resultant increase in market share from 0,2 % to 1,7 %. Given this very low share of sales within the Community, it is also considered that there are insufficient grounds to cumulate Ukrainian urea imports. As with the Slovak Republic, it follows that there is no need to examine the question of whether such imports have caused injury to the Community industry concerned.

### (e) Russia

- (62) The investigation revealed that dumped imports of Russian origin went up from 39 873 tonnes in 1989 to 117 706 tonnes during the investigation period, an increase of 195 %. Although this quantity significantly exceeded the amount agreed in the undertaking given in 1987, it should be borne in mind that following the political break-up of the USSR, the export monopoly holder lost its monopoly and, in effect, the undertaking became totally unmanageable. Certain producers in Russia began exporting direct to the Community without the intervention of the export monopolist and this lack of a restraining presence led to the large influx of imports which occurred during the investigation period. It was found that the market share of dumped imports from Russia rose from 0,9 % in 1989 to 2,6 % during the investigation period.

## 3. Prices of dumped imports

- (63) For imports of urea from Russia, the weighted average duty paid cif Community-frontier-price was compared to the weighted average ex-works selling price of urea in the Community of the Community producers. All prices were compared at the same level of trade and all discounts and rebates were excluded. With regard to the duty paid price, this was calculated by taking the Eurostat import price and adding customs duty at a rate of 10,6 % (a weighted average — based on volume — of the two customs duty rates of 11 % and 8 % applicable to imports of urea under the different CN codes).
- (64) In making such a comparison, however, it was brought to the attention of the Commission that a certain difference in price existed between Community-produced urea and that from the former USSR as a result of the imported product's inferior quality and finish. Its tendency to deteriorate during transport, combined with the fact that

importers cannot always offer the same security of supply as the Community producers, leads naturally to lower prices. While these differences are difficult to evaluate in monetary terms, it has been concluded that such a difference exists and that a 10 % adjustment in value is considered to be appropriate.

- (65) Whilst admitting that the Community producers' product commanded a higher price, EFMA considered that the level of the adjustment was too high. Moreover, they argued that the conclusions drawn were without basis given the lack of factual supporting evidence.

EFIA also contested the level of the adjustment, but on the grounds that it was insufficient given the significantly inferior state of the Russian product on arrival at the end user in the Community. They argued that this poorer quality had to be compensated for by lower prices.

- (66) In view of the inconclusive and conflicting information received by the Commission, it was concluded, based on the information available, that a 10 % adjustment level was both reasonable and appropriate. It also constituted the middle ground between the figure put forward by the Community producers and the amount requested by EFIA.
- (67) Allowing for these differences, the level of undercutting of the Community producers' prices was found to be approximately 10 % for urea of Russian origin.

#### 4. Situation of the Community industry

##### (a) *Production, production capacity, capacity utilization rate and stock*

- (68) It was found that the Community producers' production of urea increased by 1,4 % between 1989 and the investigation period. It should be noted that although one of the Community producers (Stickstoffwerke AG) was situated in the former German Democratic Republic, the output and sales of this company have been included in the Community producers' figures from 1989 onwards.
- (69) With regard to the Community producers' production capacity, it was established that this declined by 1,6 % between 1989 and the investigation period. In view of these minor fluctuations in production and capacity, capacity utilization rose slightly from 75 % in 1989 to 77 % during the investigation period.

- (70) The investigation also showed that the Community producers' stocks of urea increased by 8,7 % between 1989 and the investigation period.

##### (b) *Sales and market shares*

- (71) Sales on the Community market by the industry concerned decreased by 1,7 % between 1989 and the investigation period. The Community producers' market share, on the other hand, rose from 77,5 % in 1989 to 78,5 % during the investigation period. Such an increase, however, coincided with a decrease in the level of imports from third countries not concerned by this present proceeding.

##### (c) *Sales prices, profitability and profit shortfall*

- (72) The Community producers, average sales prices dropped by 10 % between 1989 and the investigation period. With regard to profitability, the investigation showed that the Community industry's position had worsened between 1989 and the investigation period as, on a weighted average basis, losses had increased from 3,7 % to 6 %.
- (73) The majority of Community producers claimed that a minimum pre-tax profit of 10 to 15 % was required for them to remain competitive. However, this was not substantiated and, as urea is a long established product, this figure is considered to be high. The Commission is of the opinion that after taking account of the decline in demand for urea, the need to finance additional investments in manufacturing facilities and the profit which is considered reasonable in the original anti-dumping investigation concerning this product, a pre-tax profit rate of 5 % should be used as the basis for assessing profit shortfall in this present proceeding.

##### (d) *Employment*

- (74) The investigation showed that the number of people employed by the Community producers in the urea sector fell by 8 % between 1989 and the investigation period.

#### 5. Conclusions concerning injury

- (75) It is noted that between 1989 and the investigation period anti-dumping in the form of quantitative undertakings were in force. Nevertheless, despite these measures, the situation of the Community producers has worsened. Although, many of the main economic indicators of injury have remained fairly static, the falling prices combined with increased stock levels and loss of employment are particularly significant. It is also evident that the Community demand for urea has contracted slightly since 1989 and that to maintain production levels and market share the Community producers have been obliged to lower their prices to levels which cause even greater losses than those which occurred in 1989.



- (76) In view of the above factors, it is concluded that the Community industry has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

## F. CAUSE OF INJURY

### 1. Effect of dumped imports

- (77) In the examination of the extent to which the material injury suffered by the Community industry was caused by dumped imports, it was found, as explained in recital 62, that the Russian market share rose from 0,9 % in 1989 to 2,6 % during the investigation period.
- (78) With regard to sales, the investigation showed that the Community producers' sales decreased by 63 700 tonnes between 1989 and the investigation period while the volume of imports from Russia rose by 77 833 tonnes. As stated below, it was also found that there had been a decline in imports of 263 802 tonnes from other third countries (excluding the Czech Republic, the Slovak Republic and Ukraine). Accordingly, it is considered that all the sales in the Community lost by the Community producers can be attributed to dumped imports from Russia.
- (79) As far as prices and profitability are concerned, it was established that during the investigation period, the average selling price per tonne of the Community producers had declined by 10 % compared with 1989. It is clear that the increasing presence of imports from Russia played a considerable part in this fall in prices since they were being offered on the market at duty paid prices of up to 14 % below the Community producers' production costs.

### 2. Effect of others factors

- (80) The question of whether the injury suffered by the Community industry had been caused by factors other than dumping by Russian exporters has also been examined. There is, however, no evidence of increased imports from any third country not subject to anti-dumping measures. In 1989 global imports from other third countries accounted for 92,7 % of all imports into the Community of urea, whereas in the investigation period this figure had dropped to 71,4 %. The estimated Community market share of such imports decreased from 20,8 % to 15,6 % over the same period.
- (81) As far as the prices of such imports are concerned, it was found that the weighted average cif import

price (before duty) from these other third countries was 22,5 % higher than the comparable cif import price of Russian urea. At a duty paid level, their price to the importer would be just below the loss-making weighted average selling price of the Community producers during the investigation period. It can be argued that the prices of these imports also contributed to the depressed state of the Community industry as such prices were well below the theoretical level needed to enable Community producers to cover all costs and achieve a reasonable profit.

- (82) It is considered that even though there was a fall in prices, the minor reduction in the overall demand for urea in the Community between 1989 and the investigation period indicates that the level of consumption for this product has more or less reached its peak. In addition, the Community producers have slightly increased their market share which would indicate that the shrinking market has not been a major contributory factor to the poor situation of the Community producers.
- (83) Whilst it can be argued that imports from other third countries may have contributed to the losses suffered by the Community industry, this does not detract from the fact that imports from Russia, taken in isolation, by virtue of their low prices and increasing market penetration, have caused material injury to the Community industry.

## G. LIKELIHOOD OF FURTHER INJURY IN THE EVENT OF EXPIRY OF EXISTING ANTI-DUMPING MEASURES

### 1. Czech and Slovak Republics

#### (a) Preliminary considerations

- (84) As the normal five year duration period for the measures being reviewed would normally have lapsed in February 1994, the question of likelihood of recurrence of injury was examined. To this end, the following factors were considered :
- production and capacity levels in the exporting countries,
  - the rate of increase of dumped imports to the Community,
  - the likelihood of Czech or Slovak urea entering the Community at price levels which will have a depressing effect on the Community producers' prices,
  - the actual and potential negative effects of such imports on the development and production of the Community industry.

- (85) With regard to the Czech and Slovak producers' capacity utilization, the investigation established that there is either limited scope for increasing production levels or there is no stated intention to do so. Unless there were to be a dramatic change in the pattern of their domestic and export sales, it is considered unlikely that imports into the Community from the Czech Republic and Slovak Republic will increase much beyond current levels.
- (86) With regard to the rate of increase of imports from these two countries, it has been established that most, if not all, of the apparent rise in volume stems from the reunification of Germany and the inclusion of sales to traditional customers in the former German Democratic Republic (GDR) in the Eurostat import statistics. If these sales to the former GDR were to be excluded, the quantitative limits originally agreed in the undertaking would have been respected.
- (87) Given that the Czechs and Slovaks are coming through the transitional stage between centrally planned and free market economies, it is considered inevitable that the export prices of urea must rise in line with market determined production and transport costs. In the medium term, it is thought that the current price advantage of the Czech and Slovak producers will be diminished and that they will be obliged to sell at higher prices which are more comparable to those of the Community producers.
- (88) The investigation has shown that the impact of Czech and Slovak imports has been negligible on the Community market and that, given the production and trading patterns of the producers in these two countries, it is unlikely that their exports to the Community will rise to significant levels in the future. As a result, it is considered that imports from the Czech Republic and the Slovak Republic will not have any major effect on the development and production of the Community industry.

(b) *Conclusion*

- (89) In view of the above factors and the minimal actual and potential market penetration of the Czech and Slovak Republics, it is concluded that there is little likelihood of injury being caused by dumped imports from these two countries in the near future and that there is no necessity to renew the protective measures.

## 2. Russia and the Ukraine

(a) *Preliminary consideration*

- (90) As with the Czech and Slovak Republics, it is necessary to make a reasoned forecast of what

would happen in the future if there were to be no anti-dumping measures in force against Russia and Ukraine.

(b) *Russia*

- (91) With regard to Russia, information available indicates that producers there have the capacity to produce 6,4 million tonnes of urea per annum. The data provided also shows that Russia actually produced 4,5 million tonnes of urea in 1992. In view of the breakdown of the collective farming system in this country, it is highly probable that the domestic demand for urea will plummet as the newly privatized farms will have no money to pay for fertilizers. The urea producers will therefore be obliged to explore further the possibility of increasing their trade with the Community.
- (92) Given also that the introduction of 'set-aside' under the common agricultural policy has caused many Community farmers to economize with regard to fertilizer purchases, it is highly likely that the market will contract further and Russian exporters will increase export volumes and reduce their dumped prices even more to gain market share.

(c) *Conclusion regarding Russia*

- (93) It is concluded on the basis of the foregoing that the negative effects of dumped imports from Russia would continue in the absence of measures.

(d) *Ukraine*

- (94) With regard to Ukraine, information supplied indicates the producers there have the capacity to produce 3,1 million tonnes of urea per annum. Unlike Russia, however, Ukraine is not self-sufficient in natural gas (the raw material used by Ukrainian urea producers) and relies heavily upon imports of gas from Russia. Information available shows that the gas supply has been severely disrupted and that Ukraine may no longer be capable of utilizing its existing capacity.
- (95) As to the level of imports from Ukraine, the latest data available shows that these have dropped to negligible levels (6 102 tonnes during the period January — October 1993).

(e) *Conclusion concerning Ukraine*

- (96) Given the above, it is considered unlikely that import levels from Ukraine will be in sufficient quantities in the future to cause injury to the Community industry concerned. Accordingly, it is concluded that there is no need to renew the protective measures against Ukraine.

## H. COMMUNITY INTEREST

- (97) In examining whether the interest of the Community is best served by the maintenance of anti-dumping measures, it should be recalled that the purpose of such measures — preventing distortion of competition arising from unfair commercial practices in the Community market — is fundamentally in the general Community interest.
- (98) With regard to this proceeding, it is considered that without measures to correct the effects of dumped imports, one or more of the Community producers may be forced to close its urea production facilities. This would lead to a loss of employment in the Community and would reduce the amount of competition on the market.
- (99) It is true that farmers and industrial users of urea in the Community have benefited in the short term from the low price of dumped imports. However, it must also be borne in mind that urea purchases by such customers account for a relatively small percentage of their total inputs. Given also that the price of urea has dropped in recent years, any adjustment to the dumping measures is unlikely to have a major impact on users' budgets and, on balance, is not sufficient reason to deny legitimate protection to the Community producers.

## I. TERMINATION

(a) *Termination as regards the Czech Republic and the Slovak Republic*

- (100) As explained previously in this Regulation, but for the inclusion of sales to the former GDR in Eurostat import statistics, the Czech and Slovak Republics have in essence respected the terms of the undertaking and the quantitative limits laid down therein. Given also in the limited scope for increasing exports to the Community much above current levels, the very low dumping margin of the Czech products, the minimal market share and penetration of Czech and Slovak imports and the limited effect on prices of such imports, it is considered that the measures against these two countries should be terminated.

No objection to this course of action was raised in the Advisory Committee.

(b) *Termination as regards Belarus, Georgia, Tajikistan and Uzbekistan*

- (101) The conclusion was drawn in recital 34 that there is no evidence of significant imports into the Community from the abovementioned countries during the investigation period. Whilst it is acknowledged that substantial production capacity exists in these countries, there is no evidence of any imminent or foreseeable change in circumstances which could lead to an influx of low-priced imports into the Community from the countries in question. In view of the above, the anti-dumping proceeding with regard to Belarus, Georgia, Tajikistan and Uzbekistan should be terminated.

No objection to this course of action was raised in the Advisory Committee.

(c) *Termination as regards Ukraine*

- (102) As with the countries mentioned in the previous recital, it is acknowledged that a considerable capacity for urea production exists in Ukraine. Nevertheless, given the relatively low level of market share held by Ukrainian exports and given the uncertainties of the gas supply from Russia, there is no clear evidence of any imminent change in circumstances. Accordingly, it is concluded that there is no need to renew the anti-dumping measures against Ukraine.

No objection to this course of action was raised in the Advisory Committee.

## J. DEFINITIVE MEASURES

- (103) The investigation has clearly shown in the case of Russia that :

- the quantities stipulated in the undertaking have not been respected, although, for the reasons stated elsewhere in this Regulation, this is not held to be the fault of the party which originally gave the undertaking,
- in spite of the anti-dumping measures introduced in 1987, imports from Russia have continued to be dumped and have contributed to the material injury suffered by the Community industry,
- Russia has a large excess production capacity and there is potential for increasing its dumped exports to the Community.

- (104) Given the above, anti-dumping measures should be imposed against Russia.

- (105) It has been established in recitals 72 and 73 that the Community producers suffered a loss during the investigation period and that a pre-tax profit rate of 5 % was considered reasonable for the purposes of this proceeding. Accordingly, in order to establish a level of duty adequate to remove the injury caused by dumping, a price was calculated which would allow the Community industry to cover its cost of production and to achieve this reasonable profit of 5 %. This price was then compared to the Russian cif duty paid import price (adjusted to take account of the differences in quality). Expressed as a percentage of the cif import price, free-at-Community frontier, the injury elimination figure is 26,8 %.
- (106) This injury elimination percentage is less than the dumping margin of 28,2 % established for Russia. Consequently, in conformity with Article 13 (3) of Regulation (EEC) No 2423/88, the definitive anti-dumping duty should be established at the level of the injury elimination figure.
- (107) In view of the downward trend of Russian import prices, a variable duty is considered to be the most appropriate course of action in this particular case. This form of duty also allows the exporters to obtain a more adequate return for their exports. The variable duty to be imposed should be based on any difference between the actual cif import price, free-at-Community frontier and a minimum price of ECU 115 per tonne,

HAS ADOPTED THIS REGULATION :

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of urea falling within CN codes 3102 10 10 and 3102 10 90 originating in the Russian Federation.
2. The amount of the duty shall be the difference between ECU 115 per tonne and the net, free-at-Community frontier price, before customs clearance, if this price is lower.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

The undertakings offered by Petrimex Foreign Trade Company Ltd (Bratislava) and Sojuzpromexport (Moscow) and accepted by Article 2 (1) of Regulation (EEC) No 3339/87, are hereby terminated.

*Article 3*

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, 16 January 1995.

*For the Council*

*The President*

E. ALPHANDÉRY