I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 450/89

of 20 February 1989

imposing a definitive anti-dumping duty on imports of urea originating in the United States of America or Venezuela and adjusting the definitive anti-dumping duty for Saudi Arabia laid down by Regulation (EEC) No 3339/87

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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 (1), and in particular Article 12 thereof,

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

Whereas :

I. CURRENT PROCEEDING

A. Provisional measures

(1) By Regulation (EEC) No 2623/88 (2), the Commission imposed a provisional anti-dumping duty on imports of urea originating in Austria, Hungary, Malaysia, Romania, the United States of America or Venezuela. That duty was extended for a period not exceeding two months by Regulation (EEC) No 4018/88 (3).

B. Subsequent procedures

(2) Following the imposition of the provisional anti-dumping duty, the Community producers and several exporters of the product concerned asked for and obtained a hearing and also made known in writing their views on the Regulation imposing the provisional duty.

(3) One exporter asked to be informed of the main facsts and considerations on the basis of which the Commission intended to recommend definitive measures. The Commission made a positive response to this resquest.

(4) In accordance with Article 7 (6) of Regulation (EEC) No 2423/88, a meeting was arranged between the Venezuela exporter and the Community producers, represented by CMC-Engrais.

(5) In addition to the investigations which resulted in the determination of the provisional anti-dumping duty, the Commission carried out further investigations at the premises of the following Community producers :

Belgium

Nederlandse Stikstof Maatschappij BV (NSM), Brussels ;

France

Compagnie française de l'azote (Cofaz), Paris,

Société Chimique de la Grande Paroisse, Paris ;

Ireland

Irish Fertilizer Industries (IFI), Dublin.

C. Dumping

(a) *Normal value*

1. Venezuela

(6) Normal value was definitively calculated on the basis of constructed value, since the average selling price on the domestic market had been lower than production costs during the reference period. Normal value was definitively determined using the method and on the basis of the facts set out in recitals 11, 13 and 14 of Regulation (EEC) No 2623/88.

However, the normal value determined on the basis of constructed value, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, was adjusted to take account of the cost of the raw material and general overheads, additional evidence having been supplied in support of the request to this effect.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 235, 25. 8. 1988, p. 5.
(3) OJ No L 355, 23. 12. 1988, p. 3.

2. Unitesd States of America

(7) In the absence of any further evidence from the firms concerned, normal value was definitively calculated in accordance with the method used for the provisional calculation, as set out in recitals 15 to 17 of Regulation (EEC) No 2623/88.

(b) *Export prices*

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

The export prices of certain United States exporters, which did not cooperate with the Commission, were determined pursuant to Article 7 (7) (b) of Regulation (EEC) No 2423/88 on the basis of the facts available, i.e. the export prices referred to in the complaint.

(c) *Comparison*

(9) In general, normal value was compared transaction by transaction with export prices at ex-works level.

The adjustments provisionally made, where appropriate, in recital 23 of Regulation (EEC) No 2623/88 to take account of differences affecting price comparability were retained.

(d) *Dumping margins*

(10) The dumping margin, calculated for each exporter, is equal to the difference between the normal value as established at the price for each export transaction to the Community, duly adjusted.

On the basis of the free-at-frontier price, the weighted average dumping margin for each of the exporters concerned is as follows:

— United States of america:	
Agrico	6,4 %
First Mississippi Corp.	0,0 %
Other exporters	21,0 %
— Venezuela:	
Pequiven/Nitroven	21,5 %

D. Injury

(11) Although this Regulation concerns only some of the countries covered by this anti-dumping proceeding, the assessment of the injury was made with reference to all the countries covered by the proceeding and serves as a basis for the determination of definitive measures in the form of definitive anti-dumping duties or undertakings.

(12) Following the additional investigations carried out since the provisional anti-dumping duty was imposed, which resulted in cesrtain adjustements to the data concerning Community producers, the definitive finding are as follows:

(a) *Volume of dumped improts*

(13) No new evidence relating to recital 27 of Regulation (EEC) No 2623/88 has been received, and the Council accordingly confirms the data set out in the said recital.

(b) *Market share of dumped imports*

(14) The volume of the imports covered by this proceeding represented an increase in the share of the Community market held by the countries concerned from 3,88 % in 1984 to 3,90 % in 1985 and 3,97 % in 1986. Their market share rose to 9,22 % during the first nine months of 1987 and to an estimated 11,5 % for 1987 as a whole. Expressed in terms of consumption of the non-captive market, corresponding to the total Community urea consumption minus the volume of urea manufactured by Community producers for captive consumption, these shares increased from 5,53 % in 1984 to 5,43 % in 1985, 5,09 in 1986, 11,96 % during the first nine months of 1987 and an estimated 15 % for 1987 as a whole.

If the imports covered by the anti-dumping measures imposed by Regulation (EEC) No 3339/87 (1) are included, total dumped imports reached a combined market share of 19,87 % of the Community urea market and 25,78 % of consumption on the non-captive market in the first nine months of 1987.

Urea for agricultural use accounts for the bulk of the dumped imports sold in this sector. The share of the market for urea for agricultural use taken by imports increased from about 5 % in 1984 and 1985 to 5,5 % in 1986, 13,91 % during the first nine months of 1987 and an estimated 20 % for 1987 as a whole.

(15) When assessing the trend of the share of the Community marked field by dumped imports, account should be taken of the trend in urea comsumption. Between 1984 and 1986 total urea consumption increased by about 30 %, from 3 923 692 tonnes to 5 116 159 tonnes. However, consumption fell slightly, by about 1 %, in 1987 to 3 707 605 tonnes during the first nine months of 1987 and an estimatesd 5 057 674 tonnes for the year as a whole.

(1) OJ No L 317, 7. 11. 1987, p. 1.

(c) *Price undercutting*

(16) No new evidence concerning price undercutting has been received, and the Council accordingly confirms the findings set out in recital 30 of Regulation (EEC) No 2623/88.

(d) *Impact on Community industry*

— Production

(17) While Community urea consumption increased by about 29 % between 1984 and 1987, Community urea production fell by 12,5 % between 1984 and 1985, from 5 567 049 tonnes to 4 869 820 tonnes, and by a further 7 % in 1986 to 4 537 068 tonnes. In 1987 estimated production totalled 4 564 795 tonnes, on the assumption that output during the first nine months of 1987 (3 423 596 tonnes) continued at the same level during the last three months of that year.

The quantity of urea produced for the non-captive market (i.e. total production minus captive consumption) fell from 4 397 756 tonnes in 1984 to 3 703 340 tonnes in 1985 and to 3 413 534 tonnes in 1986, which represents annual decreases of 16 % and 8 % respectively. This quantity may have risen slightly, by about 0,5 %, to an estimated 3 431 499 tonnes in 1987.

— Capacity utilization

(18) Capacity utilization by the Community industry fell from 85,38 % in 1984 to 77,32 % in 1985 and to 69,95 % in 1986. It remained relatively stable in 1987 in comparison to 1986, but the stocks held by Community producers increased considerably.

— Sales

(19) Total sales in the Community of urea produced within the Community remained relatively stable in 1984 and 1985 reaching 3 627 183 and 3 639 945 tonnes respectively, rising by about 3 % in 1986 to 3 745 607 tonnes and totalling 2 784 873 tonnes during the first nine months of 1987. Total sales in 1987 are estimated at 3 713 164 tonnes, a fall of 1 % compared with 1986, on the assumption that consumption in the first nine months of 1987 continued at the same level in the last three months of that year. Community urea producers' sales on the Community non-captive market increased from 2 457 890 tonnes in 1984 to 2 622 073 tonnes in 1986, an increase of 6,6 %, and fell slightly during the first nine months of 1987 to 1 934 901 tonnes, giving an estimated sales total for 1987 of 2 579 868 tonnes, representing a fall of nearly 1 %. Sales of urea for agricultural use increased by about 5 % between 1984 and 1986, from 1 870 511 tonnes to 1 967 225 tonnes, and fell to 1 425 957 tonnes during the first nine months of 1987, giving an estimated total for 1987 of 1 901 276 tonnes, representing a fall of about 3 %. This stagnation contrasts with the increase in urea consumption in the Community (see recital 16 of this Regulation).

(20) Thus Community producers' overall share of the Community market fell from 92,4 % in 1984 to 88,2 % in 1985, 73,2 % in 1986 and about 75 % in 1987. Their share of the non-captive market fell from 89,2 % in 1984 to 83,5 % in 1985, 65,6 % in 1986 and 67,7 % during the first nine months of 1987. Their share of the market for urea for agricultural use fell from 88,8 % in 1984 to 82,4 % in 1985 and 61,6 % in 1986. During the first nine months of 1987 it recovered slightly to 63 %. The slight improvement in Community producers' market share may have been the result of the announcement of the previous anti-dumping investigation and the anti-dumping measures adopted against eight exporting countries (see recitals 1, 2 and 3 of Regulation (EEC) No 2623/88). These trends are most apparent on the largest Community urea markets.

In Italy, the main market for urea, consumption totalled 1 025 273 tonnes in 1984, which represented 37,2 % of total Community consumption on the non-captive market. While consumption increased by 22,7 % between 1984 and 1986 to reach 1 258 834 tonnes, the share taken by Community producers fell from 89,4 % to 79,3 %. In 1987, while consumption increased by about 8 %, the market share taken by Community producers fell further to 70 % and that taken by imports from the six countries covered by this proceeding increased to about 5 %.

In France, non-captive consumption totalled 522 933 tonnes in 1984, representing 18,9 % of total non-captive Community consumption. Between 1984 and 1986 it increased by 19,7 % to 626 014 tonnes. Estimated consumption in 1987 was 704 779 tonnes, representing a further increase of about 12,5 %. Community producers' share of the non-captive market fell from 95,7 % in 1984 to 73,5 % in 1986 and 69 % in 1987, while the share taken by the dumped imports covered by this proceeding increased from 3,8 % to 15,4 %.

In Ireland, Community producers' share of the non-captive market fell from 100 % in 1984 to 98,1 % in 1985, 74,4 % in 1986 and about 72 % in 1987, while consumption increased by 72,5 % between 1984 and 1986, from 96 201 tonnes to 165 965 tonnes, and remained stable between 1986 and 1987. The share taken by imports from the six countries concerned increased from 5,7 % in 1986 to 19,5 % in 1987.

In the United Kingdom, the national producer's share of the non-captive market remained relatively stable between 1984 and 1987 at about 44 % while consumption increased by 23,7 % from 292 349 tonnes to about 361 802 tonnes ; the share taken by imports from the six countries concerned increased from 6,1 % to about 10 %.

This trend shows that in general Community producers have not been able to benefit from the increase in consumption on the main markets and that only dumped imports, including those covered by Regulation (EEC) No 3339/87, appear to have benefited.

— Prices and profits

(21) No new evidence relating to recitals 36 and 37 of Regulation (EEC) No 2623/88, which concern prices and profits, has been received, and the Council accordingly confirms the data set out in the said recitals.

(e) *Cumulation*

(22) The Venezuelan exporter claimed that it was not appropriate for the purposes of determining injury to cumulate its exports and those of the other exporters covered by this proceeding, in so far as Venezuela had only recently (1987) started exporting to the Community.

To determine whether it was in this case appropriate to cumulate the imports covered by the complaint, the Commission took account of the comparability of the imported products in terms of physical characteristics, volumes imported and price levels and the degree to which they competed with like products produced in the Community.

All these factors were examined in recital 38 of Regulation (EEC) No 2623/88. Furthermore, the argument put forward has no bearing on the Commission's conclusions, since although Venezuela did not start exporting until 1987, in nine months its exports reached level substantially similar to that of the other exporters covered by this proceeding.

Accordingly, and in the absence of any other new evidence relating to the arguments set out in recital 38 of Regulation (EEC) No 2623/88, the Council confirms the facts and conclusions set out by the Commission in the said recital.

(f) *Causality and other factors*

(23) In the absence of any new arguments or evidence, the Council confirms the Commission's conclusions set out in recitals 39 and 40 of Regulation (EEC) No 2623/88.

E. Community interest

(24) An importers' association repeated its views on the negative impact of the anti-dumping measures on farmers' costs of production and pointed out that the farmers were not in a position to pass on the increase in their costs to consumers. However, no evidence was presented to show that such protective measures would have a significant impact on farmers' costs or that they would be prevented from passing them on to consumers.

(25) Venezuela claimed that it was not appropriate to impose anti-dumping measures against a country which was a beneficiary under the generalized preferences system.

There is in law no incompatibility between the imposition of anti-dumping measures and the existence of the generalized preferences system ; the Council further finds that the advantage conferred by the generalized preferences system is taken into account and preserved by the calculation of the amount of the anti-dumping duty, the method of calculation being explained in recital 44 of Regulation (EEC) No 2623/88.

Accordingly, and in the absence of further evidence relating to the factors referred to in recitals 41 to 43 of Regulation (EEC) No 2623/88, the Council confirms that it is in the Community interest to adopt definitive anti-dumping measures against imports originating in the countries covered by this proceeding.

F. Definitive duty

(26) The Council confirms the Commission's conclusions concerning both the method used for the determination of the duty to be applied and the form of duty, as set out in recitals 44 and 45 of Regulation (EEC) No 2623/88.

On this basis, the Commission calculated the following rates of anti-dumping duty on the free-at-Community-frontier price of the product, not cleared through customs:

— United States of America	12,0 %
with the exception of:	
Agrico Chemical Company	6,0 %
First Mississippi Corporation	0,0 %
— Venezuela	21,5 %

G. Collection of provisional duty

(27) In view of the dumping margins established and the injury caused, the Council considers it necessary for the amounts secured by way of provisional anti-dumping duty to be definitively collected, either in full or at the level of the maximum definitive anti-dumping duty imposed, where this is lower than the provisional duty.

II. REVIEW OF EARLIER MEASURES

(28) By Regulation (EEC) No 3339/87, the Council imposed a definitive anti-dumping on imports of urea originating in Libya or Saudi Arabia and accepted undertakings given in connection with imports of urea originating in Czechoslovakia, the German Democratic Republic, Kuwait, Trinidad and Tobago, the USSR and Yugoslavia and terminated the investigations. In recital 49 of that Regulation the Council considered that the measures adopted were of a transitional nature and would have to be reviewed at the end of the proceeding under way.

(29) Review of those measures led the Commission to recalculate the definitive anti-dumping duty for Saudi Arabia on the basis of the new threshold of injury determined in this proceeding, with a view to taking account of changes in the costs of production of the representative Community producer. The new costs of production, plus a profit margin, were compared with the free-at-Community-frontier export prices plus customs duties and a reasonable profit margin for the importer.

The amount of duty for imports originating in Saudi Arabia, thus calculated on the basis of the free-at-Community-frontier price of the product not cleared through customs, is 12,8 %.

In the absence of satisfactory cooperation from the Libyan exporter, the calculation of the definitive anti-dumping duty for Libya remains unchanged.

III. UNDERTAKINGS

(30) Since some of the countries covered by this proceeding offered to give undertakings, and the earlier undertakings need to be reviewed, a separate decision will be taken on this subject,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of urea falling within CN code 3102 10 10 or 3102 10 99, originating in the United States of America or Venezuela.

2. The amount of that duty, calculated on the bais of the free-at-Community-frontier price of the product, not cleared through customs, shall be:

— 12,0 % for urea originating in the United States of America, with the exception of urea produced and exported by Agrico Chemical Company, New Orleans, for which the rate shall be 6 %,

— 21,5 % for urea originating in Venezuela.

3. The duty specified in paragraph 2 for exports originating in the United States of America shall not apply to urea produced and sold for export to the Community by First Mississippi Corporation, Jackson, Mississippi.

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

5. The amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 2623/88 shall be definitively collected, either in full or up to the level of the percentages specified in this Regulation, whichever is lower. Amounts secured which are not covered by the definitive rates of duty shall be released.

Article 2

The amount of the definitive anti-dumping duty on imports of urea falling within CN code 3102 10 10 or 3102 10 99 originating in Saudi Arabia, calculated on the basis of the free-at-Community-frontier price of the product, not cleared through customs, shall be 12,8 %.

Article 3

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

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

Done at Brussels, 20 February 1989.

For the Council

The President

F. FERNANDEZ ORDOÑEZ