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COUNCIL REGULATION (EC) No 92/2002

of 17 January 2002

imposing definitive anti-dumping duty and collecting definitively the provisional anti-dumping duty imposed on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine

(OJ L 17, 19.1.2002, p. 1)

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►**M1**	Council Regulation (EC) No 1107/2002 of 25 June 2002	L 168	1	27.6.2002
►**M2**	Council Regulation (EC) No 73/2006 of 13 January 2006	L 12	1	18.1.2006

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►**C1** Corrigendum, OJ L 176, 5.7.2002, p. 47 (92/2002)

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COUNCIL REGULATION (EC) No 92/2002

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imposing definitive anti-dumping duty and collecting definitively the provisional anti-dumping duty imposed on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. **PROVISIONAL MEASURES**

(1) The Commission, by Regulation (EC) No 1497/2001 ([2]) (the provisional Regulation) imposed a provisional anti-dumping duty on imports of urea falling within CN codes 3102 10 10 and 3102 10 90, and originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine.

(2) In the same Regulation it was decided to terminate the proceeding as regards imports of urea originating in Egypt and Poland.

B. **SUBSEQUENT PROCEDURE**

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures on imports of urea from Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine, several interested parties submitted comments in writing. The parties, which so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) Additional verification visits were carried out at the premises of the following:

Community producers

— Fertiberia, Madrid.

— Hydro Agri France, Paris.

Users in the Community

— Libera Associazione Agricoltori Cremonesi, Cremona.

(6) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(7) The oral and written comments submitted by the parties were considered and, where appropriate, the provisional findings have been modified accordingly.

([1]) OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000, OJ L 257, 11.10.2000, p. 2.

([2]) OJ L 197, 21.7.2001, p. 4.

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C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(8) In the absence of any comments, the definition of the product under consideration and the like product as described at recitals 9 to 12 of the provisional Regulation are confirmed.

D. DUMPING

1. Market economy countries

Normal value

Application of Article 18 of the Basic Regulation

(9) The exporting producer in Libya claimed that recital 63 of the provisional Regulation does not accurately describe the level of cooperation provided. It claimed that the Commission was aware and implicitly accepted the fact that the overall company accounts covering all activities of the group would not be submitted due to confidentiality reasons. It furthermore claimed that in line with Libyan accounting requirements, no public audited accounts have to be filed and therefore, in accordance with Article 2(5) of the Basic Regulation, the Commission should not have rejected the company's accounts on these grounds.

(10) As far as the level of cooperation is concerned, the Commission has never given any indication that it accepted the company's refusal to submit essential accounting documents. On the contrary, it has repeatedly informed the exporting producer of the possible application of Article 18 of the Basic Regulation including the use of best facts available, due to the deficient level of cooperation. Nevertheless, the company maintained its position and did not submit substantial information necessary to reconcile in particular domestic sales and the cost of production of the product concerned. Under these circumstances, and in order to determine the normal value for the company concerned, the Institutions had no choice but to make use of facts available, and namely of information provided in the complaint, in accordance with Article 18 of the Basic Regulation. In view of the above, it is incorrect to assume, as the company did, that the absence of publicly audited accounts was the reason for the use of facts available in the determination of the normal value.

(11) This is also confirmed by the fact that the reported data were used whenever it was possible to reasonably verify and reconcile it with the company's internal accounts, in particular when establishing the export price of the Libyan exporting producer (see recital 67 to 72 of the provisional Regulation).

(12) The same exporting producer claimed that its normal value should have been established on the basis of the actual domestic sales price or alternatively constructed on the basis of the company's own accounting data, rather than on the basis of the data submitted by the Community industry in the complaint. It argued that, for this purpose, all necessary evidence and information related to the production and sales of urea on the Libyan domestic market was provided.

(13) The company failed consistently to submit essential information in the reply to the questionnaire and to satisfactorily explain inconsistencies and contradictions revealed during the verification visit, despite of the fact that these were expressly pointed out by the Commission in deficiency letters and on-spot. It was therefore not possible to establish the completeness and correctness of the domestic sales reported, nor of the cost of production submitted. Consequently, as far as the submission of evidence and information related to the production and sales of urea on the Libyan domestic market is concerned, the findings of recital 64 and 65 of the provisional Regulation are confirmed.

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(14) As mentioned in recital 66 of the provisional Regulation, in the absence of any other reliable information normal value for the exporting producer in Libya had to be established on the basis of the data submitted in the complaint in accordance Article 18 of the Basic Regulation.

(15) The same exporting producer claimed that, in any case, the profit margin used in the complaint in order to construct normal value was overestimated. It argued in support of its claim that profit margins in the urea business are traditionally low.

(16) On the basis of the findings regarding other cooperating exporting producers in this proceeding, the Commission considered it appropriate to review the level of the profit margin used for constructing the normal value of the exporting producer in Libya.

(17) As outlined in recital 22 of the provisional Regulation, the average profit margin realised by the cooperating exporting producers in the present investigation when selling the product concerned on their domestic markets, in accordance with Article 2(6)(c) of the Basic Regulation, has been used to construct the normal value of those exporting producers for which the profit margin could not be established in accordance with the chapeau of Article 2(6) of the Basic Regulation or its subparagraphs (a) and (b). Considering that no valid reason could be identified which would justify to apply a different profit margin to the Libyan exporting producer, and in the absence of any more appropriate information, it was decided to apply at the definitive stage this same profit margin to the Libyan producer in order to establish normal value.

Normal value based on domestic sales

(18) Two exporting producers in Romania submitted that normal value should be established on a monthly basis due to inflation in Romania during the investigation period. This methodology has been used at the provisional stage for all exporting producer in Romania.

(19) After imposition of the provisional anti-dumping duties, this approach was however re-analysed. The investigation has shown that the effects of the inflation were not such as to justify the calculation of monthly normal values. It is the Institution's consistent practice to establish average normal values for the investigation period except in situations such as hyperinflation. These conditions were however not fulfilled in the case of Romania.

(20) It was consequently considered appropriate to establish the normal value at the definitive stage for each exporting producer in Romania on the basis of the average price paid on the domestic market during the investigation period.

Constructed normal value

(21) The Community industry claimed that for the determination of the profit margin used in the construction of normal values for the exporting producers in Bulgaria, Estonia and Lithuania, the minimum return on capital employed 'normally necessary to sustain a viable urea business over the medium-long term' should have been used. It was argued that profit margins in the above countries would in general not be reliable due to 'overhangs' of the non market economy system in the accounting policies of the companies concerned.

(22) The investigation did not reveal any evidence or information indicating that the accounts of the companies concerned were not reliable and could thus not be used in the determination of the profit margin. Therefore, the Institutions had no alternative but to establish normal values in accordance with Article 2(3) and (6) of the Basic Regulation. Thus, profit margins were

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established in accordance with Article 2(6)(b) and (c) of the Basic Regulation, i.e. on the basis of the profit realised for the same general category of products produced and sold by the exporting producer concerned on the domestic market in the case of Lithuania; and in the case of Bulgaria and Estonia on any other reasonable basis, i.e. on the basis of the weighted average profit margin found for the other cooperating exporting producers in this proceeding.

(23) However the level of the profit margin which was established in accordance with Article 2(6)(c) of the Basic Regulation on the basis of the weighted average profit margins of cooperating exporting producers with profitable domestic sales was re-examined. Further to the termination of the proceeding as regards imports of urea originating in Egypt, exporting producers from Egypt were excluded from the calculation of the average profit margin.

(24) Following the comments of the Estonian exporting producer the profit margin used for the reconstruction of its normal value was reassessed. A re-examination of the provisional findings made apparent that the profit margin used — based on the sales of other products by the company — had to be reviewed, since these products could not be considered as being part of the same general category as the product concerned (i.e. fertilisers). Thus, in the absence of sufficient sales in the ordinary course of trade, of any other Estonian exporters/producers of the product concerned and/or other products of the same general category sold by the Estonian company concerned, any other reasonable method has been applied at the definitive stage pursuant to Article 2(6)(c) of the Basic Regulation. In this regard, the profit margin has been based on the weighted average profit margin of the other cooperating exporting producers concerned (as for the Bulgarian exporting producer, see recital 22 above).

(25) The Lithuanian exporting producer has argued against the use of selling, general and administrative costs (SG&A) and profit of ammonium nitrate (AN) in constructing normal value. It claimed that urea and ammonium nitrate are different fertilisers, sold in different markets and in different competitive situations, and with differences in manufacturing technology, market demand, selling prices and costs.

(26) Since there is only one producer of urea in Lithuania, and in the absence of representative domestic sales, Article 2(6)(b) of the Basic Regulation is a possibility for the determination of SG&A and profit. Also, urea and AN are both nitrogen fertilisers and, even if differences in production technology exist to some extent, they do belong to the same general category of products, as required by the Basic Regulation. For the sake of argument, markets and competitive situations are not dissimilar (one producer, import competition). In view of the above, it was decided to maintain the provisional determination.

Export price

(27) In the absence of any comments by the interested parties, or any other findings which could devaluate the provisional findings, the export prices of the exporting producers concerned as established provisionally are hereby confirmed.

Comparison

Handling and loading cost

(28) Following the comments received by the Libyan exporting producer with regard to the calculation of loading and handling costs when exporting the product concerned to the Community, the Commission reviewed its calculations and found a calculation error which was corrected accordingly.

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2. **Non-market economy countries**

(29) The exporting producer from Belarus contested the fact that the Commission has allegedly treated it as a non cooperating party in the proceeding. The company claimed to have provided to the Commission all the information requested and considered that the reason for being treated as a non cooperator was to deprive it of its rights as a cooperating party and namely of the opportunity to offer an undertaking.

(30) In the present investigation, the fact that the company did not provide the information required to establish a verifiable export price led to the application of the rule set in Article 18 of the Basic Regulation for non-cooperating parties and consequently to the partial use of 'facts available', in this case the export figures provided by Eurostat.

(31) It is nevertheless noted that, contrary to the company's allegations, the partial application of Article 18 did not deprive it of any of its rights as an interested party, and namely of the right to receive disclosure, to be heard and to present written submissions, to consult non confidential files and the opportunity to offer an undertaking.

Market economy status ('MES')

(32) As outlined in recital 118 to 130 of the provisional Regulation, in accordance with Article 2(7)(b) of the Basic Regulation, three companies in the Ukraine filed applications that market economy conditions prevail in respect of the manufacture and sale of the like product concerned ('market economy status' or 'MES'). It is recalled that two Ukrainian companies received MES. One Ukrainian exporting producer, which was refused MES, disagreed with the Commission's findings on possible State interference.

(33) The Community industry re-iterated its claim that companies in the Ukraine producing and selling nitrogen fertilisers including urea, are subject to significant State interference and that therefore, on a general basis, no MES should have been granted. In particular, it argued that the Ukrainian fertiliser market was characterised by the existence of tolling agreements, barter chain arrangements and State interference in energy, electricity and transportation cost, and that all these factors were incompatible with a market economy situation.

(34) These arguments by the exporting producers and the Community industry have already been treated in recitals 118 to 130 of the provisional Regulation. It is nevertheless added that concerning tolling agreements, it was considered that these are not per se in contradiction with MES, since they cannot necessarily be considered as a typical characteristic of State interference. As far as the State interference in transport costs is concerned, this was taken into account by using the transport rates applicable in the analogue country. Concerning energy and electricity costs, no evidence was found that these costs were significantly distorted by State interference and that they did not substantially reflect market value. Furthermore, compared with natural gas, the cost of energy and electricity is not a major input of urea.

Individual treatment

(35) The Community industry objected to the decision to grant individual treatment to one of the Ukrainian exporting producers arguing that the shareholding of the State in the company would allow significant State interference.

(36) However, no new information or evidence was submitted by the complainant Community industry showing that the alleged State interference would permit circumvention of the measures imposed and the claim had thus to be rejected. The findings of

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the provisional Regulation (recital 132) are consequently confirmed.

Sales under tolling agreements

(37) As described in recitals 133 to 135 of the provisional Regulation three companies in the Ukraine were involved in tolling agreements. It is recalled that, under Ukrainian law, the provider of the raw materials remains the owner of the finished product, the company doing the transformation does not acquire property rights over the goods.

(38) The investigation revealed that one of the companies which was granted MES could not be considered, on its own, an exporting producer of the product concerned. This company had established a long-term business relationship with another company based in a third country. According to this relationship, the latter company was virtually the sole supplier under tolling agreements (and owner throughout the production process) of the main raw material. This company was also actively involved on the export sales of the product concerned. These facts clearly indicated that the relationship between these companies went beyond the usual buyer-seller relationship.

(39) In the absence of any cooperation from the associated gas supplier, neither the full cost of manufacturing nor the price paid or payable on export sales could be established, let alone verified. It should also be noted that although certain information on export prices to the first independent buyer was available, this information was not verifiable and could therefore not be used to establish a dumping margin. Since without the cooperation of the associated supplier (and legal owner of both the main raw material and the finished product), neither the normal value nor the export price of the Ukrainian company concerned could be reliably established. Therefore, an individual dumping margin could not be established for this company.

(40) Another Ukrainian company, which was neither granted MES nor individual treatment, realised all its export sales under tolling agreements. In the absence of any cooperation of its gas supplier, and in the absence of verifiable export prices to the first independent buyer, the prices of these transactions were established as described in recital 66 below in the purpose of the assessment of the country-wide dumping margin.

(41) Finally, a third company has done part of its domestic and export sales under tolling agreements. Likewise, in the absence of cooperation from its suppliers, and in the absence of verifiable prices to the first independent buyer, the Community Institutions had no option but to disregard all sales made under such tolling agreements. The remaining domestic sales were still representative, as determined in recital 138 of the provisional duty Regulation.

(42) Two further Ukrainian companies which had also sales on the basis of tolling and whose gas suppliers equally refused to cooperate argued nevertheless that the sales data submitted was accurate and reliable and that they had provided sufficient evidence allowing these transactions to be taken into account when determining normal value or export price.

(43) During the verification visit it was established that neither the invoice prices nor the payments for urea were included in the accounting records of these companies. In the absence of any cooperation by the suppliers of gas, in which accounts these data should normally be registered, or of any evidence of the actual payments for these transactions, the information could not be verified and could not, therefore, be accepted.

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Normal value

(i) *Analogue country*

(44) Three Ukrainian exporting producers argued that their normal value should not have been based on the domestic prices and costs of an analogue country, but that the normal value based on domestic sales of an Ukrainian exporting producer which was granted MES should have been used instead.

(45) It is the Community institutions' consistent practice, in line with Article 2(7)(b) of the Basic Regulation, to determine normal value on the basis of paragraphs 1 to 6 of Article 2 of the Basic Regulation only for those producers that can show that they operate in line with market economy conditions. For all other producers in the same country, normal value is determined on the basis of Article 2(7)(a), i.e. on the basis of a price or constructed value in a market economy third country, or on any other reasonable basis foreseen in Article 2(7)(a). No changes are therefore warranted in this respect to the provisional findings.

(46) The Belarussian exporting producer, three Ukrainian exporting producers, the government of Belarus and the Ukraine as well as an importer association objected to the choice of the USA as an analogue country claiming that Lithuania was a more appropriate market economy third country.

(47) These parties alleged that the USA was not an appropriate choice because of its high gas costs which would lead to distorted urea prices, its different level of economic development compared to Belarus and the Ukraine, and differences in market size. The fact that only one producer in the USA cooperated was also seen as an argument not to use USA as a market economy third country. It was further argued that Lithuania was the most appropriate analogue country. It was claimed that the volume of urea produced in Lithuania was representative as compared to the volume of exports of urea from the Ukraine and Belarus to the Community during the IP. It was moreover claimed that Lithuania would be an open, competitive market where no import duties exist, with a similar access to natural gas, and a similar production process as in Belarus and the Ukraine. The fact that there was only one producer of urea in Lithuania was also considered irrelevant by the parties, as Lithuania and other countries with one producer of the product concerned have already been used in previous investigations of products belonging to the same category.

(48) The Community institutions have examined all the above arguments in detail and came to the following conclusions:

(49) While on the USA market more than ten producers of urea are operating compared to at least five producers in Ukraine, there is only one producer in Lithuania. Despite the fact that anti-dumping duties exist in the USA on imports of urea from former Soviet Union countries, there were substantial imports (more than 1 million tons) of urea from a number of other third countries. Although the further investigation revealed that there are no import duties applicable in Lithuania to imports of urea, those imports remain nevertheless at a very low level. The USA has a vast urea market (more than 10 million tons per year), whereas the Lithuanian urea market is practically non-existing. Thus, sales of urea during the investigation period ('IP') on the Lithuanian market were minimal and, according to the information provided by the Lithuanian producer, not made in the ordinary course of trade. It has thus been concluded that the US-market for urea is highly competitive, in contrast with the Lithuanian market. Finally, and contrary to Lithuania, domestic sales in USA are representative when compared to Belarus and Ukrainian exports to the Community.

(50) The fact that only one US producer cooperated in this investigation does not render the above conclusions invalid. In fact, the

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prices of this producer, which were used to establish normal value are subject to the above-described competition. The quantities sold by this producer alone were even representative when compared to the total quantities exported from Belarus and Ukraine to the Community.

(51) Regarding the similarity in access to natural gas, the main raw material used for the production of urea, an analysis of the supplies to the urea producers was also made. It was confirmed that while the American producer had natural gas supplied by more than one supplier, as it was the case in Ukraine, the Lithuanian producer had only a single supplier and no possible alternative suppliers. In addition, similar to Ukraine, the USA is both a producer and an importer of natural gas, while Lithuania has no own natural gas resources.

(52) The Commission has also compared production processes in the USA and Belarus and the Ukraine and concluded that the technology used by the American producer was at least as efficient as the one used by the Belarus and Ukrainian producers.

(53) It was also argued that Lithuania should be used as the analogue country since it was subject to the same investigation.

(54) The Commission notes that Article 2(7) of the Basic Regulation stipulates that, where appropriate, a market economy country which is subject to the same investigation shall be used. However, for the reasons outlined in recitals 49 to 51, Lithuania could not be considered as an appropriate analogue country in this investigation.

(55) As already stated in recital 107 of the provisional Regulation, an adjustment was made to the high natural gas cost during the IP in the USA. The high natural gas cost was the result of a market situation specific to the USA during the IP. This adjustment brought the gas cost down to a level comparable to the one of other companies cooperating in this same proceeding.

(56) The Community industry supported the choice of the USA as an analogue country. However, it claimed that gas prices in the USA experienced only mild increases and that therefore no adjustment should have been made in this regard. While it is correct that the sharpest increase in gas prices took place only in the second half of the year 2000, i.e. after the IP, it was found that during the second half of the IP there was already an unusual and specific increase in the cost of natural gas. The adjustment made was therefore considered justified.

(57) For all the above reasons, it is concluded that the USA is an appropriate analogue market economy country and was selected in a not unreasonable manner. A normal value based on the domestic sales in the USA made in the ordinary course of trade, which includes a reasonable and not excessive profit margin, is therefore fully in line with the requirements of Article 2(7)(a) of the Basic Regulation.

(ii) *Normal value for companies granted MES*

(58) The Ukrainian company, which had almost all its sales made under tolling agreements, argued that its domestic sales should be used as a basis for the determination of its normal value. As alternatives, the company proposed the Commission to use the normal value of an Ukrainian exporting producer to which MES was granted or to construct normal value on the basis of the company's own data.

(59) As a consequence of non-cooperation by the associated supplier of gas, it was concluded that this Ukrainian company could not be qualified, on its own, as an exporting producer of urea (see details in recitals 38 and 39). Consequently, no normal value was established.

(60) As announced in recital 138 of the provisional duty Regulation, it was further examined whether adjustments to other cost factors,

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and in particular to depreciation incurred by the Ukrainian exporting producer for which normal value was based on its own data, were necessary.

(61) A comparison of the depreciation cost included in the cost of production of the different production facilities of the cooperating producer in the analogue country with the depreciation incurred by the Ukrainian producer showed certain differences. However, these differences could have been caused by numerous factors and were in any event not such as to warrant an adjustment to the Ukrainian producer's cost. Moreover, as the normal value for this Ukrainian producer was based on domestic sales, any change to the cost would have a negligible impact, if any. No adjustments were therefore made.

Export price

(62) Two companies in the Ukraine, whose export sales were made on the basis of tolling agreements and therefore excluded from the dumping calculations, submitted that their export price should be constructed on the basis of the transformation fee charged to their export customers plus the gas cost paid by themselves or another exporting producer in Ukraine, plus a reasonable amount of profit.

(63) For one of the companies, as a consequence of non-cooperation of the associated supplier of gas, not only the prices of its exports sales were not verifiable, but this company could not be qualified, on its own, as an exporting producer of urea (see details in recitals 38 and 39). Consequently, no individual dumping margin has been established for it.

(64) Regarding the other company, the methodology proposed is not in line with Article 2(9) of the Basic Regulation. The purpose of this Article is not to provide alternative methods to establish export prices in cases of non cooperation, but instead to take account of the participation in the export sales, of an importer in the Community related or associated with the exporting producer. The construction proposed by the Ukrainian companies, contrary to what is established on Article 2(9) of the Basic Regulation, is not based on any price of sale to an independent party. Instead it uses as a starting point a cost of manufacture (a method used to construct normal values, not exporting prices). The claim was therefore rejected.

(65) A third Ukrainian company, which also had all its export sales made under tolling agreements, argued that rather than taking the lowest export prices, the average export price of other Ukrainian exporting producers should have been used.

(66) However, there was no reason to believe that the average export price of other Ukrainian exporting producers was more accurate. It is the Community Institutions' practice, in cases of non-cooperation to use the weighted average export price of the transactions with the lowest export prices, representing at the same time a considerable quantity of the export quantities with verifiable prices.

Comparison

(67) Two Ukrainian companies and one Belarussian company claimed that the Commission should provide them with basic information to allow them to claim natural comparative advantages.

(68) Since only one US company cooperated in the proceeding, no specific evidence regarding production and sales' details of this company could be disclosed without breaching the rules on confidentiality. Other basic information (geographic location, access to raw materials, etc.) is publicly available. The Community Institutions have analysed the available information and have made, on their own initiative, the necessary adjustments. It is re-called that an unusually high natural gas cost during the IP in the USA was

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identified and consequently, an adjustment made to the gas cost used for the cooperating USA company brought the gas cost down to a level comparable to the one of other companies cooperating in this same proceeding.

(69) Three Ukrainian companies and the Belarussian company disagreed with the fact that the Commission made an adjustment for inland transport to the export price based on railway tariffs in the analogue country. It was argued that Ukrainian tariffs should be used, or alternatively, Lithuanian tariffs.

(70) Railway tariffs in Ukraine and Belarus, countries which are not yet operating under market economy conditions, are set by the State and cannot, therefore, be considered to reflect normal market prices. It is a long established practice of the Community Institutions to base adjustments for this type of inland transport for countries under Article 2(7) of the Basic Regulation, on verified data from the analogue country, when available. It was also specifically mentioned when granting MES to some of the Ukrainian companies involved that certain cost factors could be corrected to bring them in line with normal market value. No change to the provisional findings is therefore warranted.

(71) It was also claimed that lower tariffs should be applied as Ukrainian exporting producers used own railway wagons with large consignments, including return of empty wagons.

(72) Information from the producer in the analogue country revealed that an adjustment for the use of own wagons was warranted. The calculations were therefore revised accordingly.

(73) It was argued by the Ukranian and Belarussian companies that the adjustment made for physical differences between 'granular' urea sold on the domestic market of the analogue country and 'prilled' urea exported by these countries should have been based on price differences on the European market.

(74) However, since the aim is to determine a normal value for prilled urea on the analogue country market, the adjustment must be based on a price difference on that same market. The adjustment made has thus been based on price differences on the US market. To use the Community market does not appear to be appropriate because the price difference on that market will in all likelihood be influenced by dumping practices. Consequently, the claim was rejected.

(75) Two Ukrainian companies and the company in Belarus also claimed an adjustment for level of trade as they were allegedly selling only to traders.

(76) The exporting producers in the Ukraine and Belarus exported the product concerned to traders. The cooperating producer in the analogue country sold the product also to traders. Part of the domestic sales of the analogue country producer were made to blenders. A thorough analyses of functions and prices revealed that the claim was not warranted.

3. **Dumping margin for companies investigated**

Application of Article 18 of the Basic Regulation

(77) Subsequently to the imposition of provisional duties, the Commission further examined whether the freight costs reported by the Lithuanian exporting producer, but paid by the importers, were accurate. It was found that these costs were overstated when compared to information collected from importers and with publicly available quotations for the same routes. The amounts for freight costs have been revised accordingly and the actual costs have been used.

(78) Following the comments of the Estonian exporting producer concerning the inappropriateness of an adjustment of the cif value of the unreported sales used to express the dumping

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margin for these sales that was made at the provisional stage, the Commission analysed the issue in more detail and decided to revise the methodology used. The adjustment made at the provisional stage has been withdrawn. However, in the absence of reliable information provided by the company, the Commission decided to base its findings on the information provided by Eurostat, since it constitutes the most reliable data available.

(79) The Commission provisionally made an adjustment to the cif value of the Belarussian exporting producer used to calculate the dumping margin. Since this adjustment was made erroneously, the adjustment was withdrawn.

Dumping margins

(80) The definitive dumping margins, expressed as a percentage of the cif import price at Community border, are:

Belarus	
All companies:	67,3 %
Bulgaria	
— Chimco AD:	90,3 %
— Others:	90,3 %
Croatia	
— Petrokemija d.d.:	72,9 %
— Others:	72,9 %
Estonia	
— JSC Nitrofert	37,4 %
— Others:	37,4 %
Libya	
— National Oil Corporation:	48,8 %
— Others:	48,8 %
Lithuania	
— Joint Stock Company Achema, Jonava:	10,0 %
— Others:	10,0 %
Romania	
— S.C. Amonil S.A., Slobozia	20,1 %
— Petrom S.A. Sucursala Doljchim Craiova, Craiova	40,7 %
— Sofert S.A., Bacau	25,2 %
— Others:	40,7 %
Ukraine	
— Cherkassy Azot, Cherkassy	21,1 %
— Dnipro Azot, Dniprodzerzhinsk	66,3 %
— Others:	82,1 %.

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E. INJURY

1. Definition of the Community industry

(81) Several interested parties repeated their claim that those Community producers which purchased and imported urea from countries covered by this proceeding, should be excluded from the definition of the Community industry

(82) As outlined at recital 156 of the provisional Regulation, these purchases were mainly small in volume and were made to cover production shortfalls due to maintenance works. The one company that did make more substantial purchases, equal to approximately 20 % of its own production in the IP, did so in order to supplement its product range. The investigation showed that this company is primarily a producer of urea, and not an importer, and that there are thus no good reasons for it to be excluded from the definition of the Community industry. In any case such exclusion would have no significant impact on the findings of the case nor on the level of duties imposed.

(83) Accordingly the findings in recital 157 of the provisional Regulation are confirmed.

2. Community consumption

(84) In the absence of any new information, the findings concerning Community consumption as outlined at recitals 158 and 159 of the provisional Regulation are confirmed.

3. Imports from the countries concerned

Cumulative assessment of the effects of the imports concerned

(85) It was claimed that imports of urea originating in Romania should not be cumulated with imports from the other countries covered by this proceeding. The claim was based on the grounds that the import volumes and the market shares developed differently over the period considered.

(86) At recital 162 of the provisional Regulation, it was determined that:

— imports from all the countries concerned were substantial and well above the levels set out in Article 5(7) of the basic Regulation,

— the dumping margins found were all above the *de minimis* level, and all exporting producers undercut the sales prices of the Community industry,

— the prices of both imported and Community produced urea fell significantly over the period considered.

(87) The volume of urea imports from Romania followed the trend for the price of urea on the Community market i.e. there was a certain relationship between prices and the volume of imports from Romania over the period considered. In 1999 when prices were at their lowest, there were almost no imports from Romania. This is evidence of price transparency in the Community urea market. It also shows that Romanian exporters will withdraw from a market when prices fall too far. Nevertheless, with the partial recovery in prices between 1999 and the IP (recital 164 of the provisional Regulation), Romanian imports increased substantially so that they held 2,3 % of market share during the IP. Of the countries concerned, Romania was the fourth largest exporter to the Community during the IP.

(88) Nor was this import trend specific to Romania. Imports from several of the countries concerned also followed a remarkably similar pattern of falling imports between 1996 and 1999 followed by a significant return to the Community market during the IP. This is against a background of total import

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volumes from the countries concerned rising year on year over the period considered. The only change was in the share of those imports between the countries concerned in line with prices. This is further evidence of competition between imported products and is not a reason for de-cumulating the imports from Romania, or indeed any of the other countries concerned.

(89) For all of the reasons outlined above, it is concluded that the criteria as set out in Article 3(4) of the basic Regulation have been met. The findings at recital 162 of the provisional Regulation are, therefore, confirmed.

Volume, market shares, and prices of the imports concerned

(90) In the absence of any new information on the volume and prices of imports from the countries concerned, the provisional findings are confirmed.

Undercutting

(91) For the provisional determinations, undercutting was calculated by comparing the exporters' Community frontier, ex quay, customs duty paid price level (DEQ) with the Community producers' verified ex-works prices. The comparison was made at a prilled to prilled, granular to granular, bulk to bulk, and bagged to bagged level.

(92) A number of parties, including several of the exporting producers, claimed that the Community producers' prices for the undercutting comparison should be the weighted average price at the Community industry level and not the price at the individual producer level. It is claimed that such a methodology serves to artificially inflate the margin by zeroing at the Community producer level.

(93) It should first be noted that the undercutting or price comparison exercise is an injury indicator which, under Article 3(3) of the basic Regulation, aims to examine 'whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree'.

(94) It is true that not all imports from the countries concerned undercut the prices of each Community producer. However, a significant volume of export sales were made at prices below those of the Community industry. It is also noted that the Community urea market is both highly transparent and sensitive to price changes.

(95) Following further analysis it was found that, for the countries concerned, the proportion of imports, by company, which undercut the Community industry's prices, varied from 0 % to 56 %, with an overall average for all imports of 46 %. The level of the undercutting ranged as high as 17 %. For this analysis, no zeroing was used. Due to problems with cooperation from the exporting producer in Belarus (recital 113 of the provisional Regulation) and Estonia (recital 58 of the provisional Regulation), it was not possible to carry out this price comparison for these companies. However, there are no reasons to suggest that their results would have been any different.

(96) Furthermore, it should be noted that the Community industry recorded losses during the IP (recital 175 of the provisional Regulation), i.e. the prices of the Community industry were depressed. Also for the one company with no undercutting, underselling was still found.

(97) It is, therefore, definitively determined that there was both significant price undercutting by the exporting producers in the countries concerned, as well as a depression of prices on the Community market during the IP.

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(98) A number of claims were made concerning the injury elimination calculations. These are addressed in detail in recitals 114 to 116 and 121 to 123. However, where adjustments were granted, it is confirmed that these were also taken into account for the undercutting exercise.

4. **Situation of the Community industry**

(99) Following further verification of two Community producers, some of the injury indicators changed in absolute terms. However, these changes were not sufficient to materially affect the trends of the injury indicators over the period considered or to alter the provisional conclusions. Based on the above, the provisional findings of material injury suffered by the Community industry are confirmed.

F. **CAUSATION**

(100) A number of interested parties re-iterated their claim that the injury suffered by the Community industry was not caused by dumped imports but rather by the oversupply of urea on the world market. This is linked to the claim made by some of the parties that the injury suffered by the Community industry was a result of their fall in export sales, which in turn affected their sales on the Community market.

(101) In this respect, it should be noted that the assessment of the situation of the Community industry was based on data relating to sales of the product concerned on the Community market. Therefore, the potential negative effects of reduced export sales are excluded in the above injury analysis.

(102) In addition, over the period considered, Community industry export sales fell by 337,000 tonnes, whilst its sales on the Community market increased by 172,000 tonnes. Therefore, faced with difficult export conditions, the Community industry was able to divert half of its lost export sales onto the Community market.

(103) At the same time, Community consumption increased by 1,25 million tonnes, low priced dumped imports increased by 867,000 tonnes (recital 163 of the provisional Regulation), and the Community industry lost 10,3 % of the Community market (recital 173 of the provisional Regulation). Rather than being the cause, the inability of the Community industry to take advantage of an expanding domestic market when export sales fell, is evidence of the existence of injury caused by the dumped imports.

(104) Accordingly, oversupply and loss of export sales could in fact only have had an effect on the Community industry (in terms of a limited loss of economies of scale) because the dumped imports prevented it from taking full advantage of an expanding Community market. Therefore, it is concluded that the effect of the fall in export sales by the Community industry, and the alleged oversupply, when they are examined separately, was not sufficient to break the causal link between the effect of the dumped imports and the material injury suffered by the Community industry. The conclusions of recitals 197 and 198 of the provisional Regulation are confirmed.

G. **COMMUNITY INTEREST**

1. **Importers/traders**

(105) Following publication of the provisional Regulation, no comments were received from any of the cooperating importers. However, one association of importers maintained that the imposition of anti-dumping measures was against the interest of importers of urea and that for them a flourishing agricultural sector is important.

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(106) As stated at recital 206 of the provisional Regulation, there will be a continuing need for imports. Even were the duties to be passed on in full this would result in an increase of no more than 0,6 % in farmers' costs at worst. Whilst such a rise may result in some changes in the way that farmers source their urea, there is no evidence to call into question the conclusions set out in recital 206 of the provisional Regulation.

2. **Users**

Farmers

(107) Following publication of the provisional Regulation, comments were received from farmers' organisations in Austria, Italy, Spain and the UK. None of these parties challenged the provisional conclusion that the duties would lead to a 0,6 %, worst case scenario, increase in farmers' costs. They did however, object to the imposition of measures and to the conclusion that prise increases would not be passed on in full.

(108) Following a verification at the premises of a farmers' cooperative, the conclusion of the cost implication of the proposed measures is confirmed. That the impact of the measures will not be passed on in full is based on experience from many other anti-dumping proceedings. There is no evidence to suggest that this would not be case in this proceeding.

(109) Whilst the difficult situation faced by farmers is re-affirmed, it is not possible to conclude that the impact of the duties would be such as to make the imposition of measures against the interest of the Community.

Industrial users

(110) No written comments were received direct from any of the cooperating industrial users of urea. This suggests that the measures would not have such an important impact on these users of urea.

(111) One industrial user, who also imports and sells urea, submitted comments via an importers association. This company suggests that the imposition of measures may force it to close its plant with the loss of up to 380 jobs. However, as this claim was not made directly by the company, and as it is not supported by any evidence, the claim is rejected.

3. **Conclusion on Community interest**

(112) In the absence of any new information regarding the Community interest aspects, the conclusions of recital 219 of the provisional Regulation, are confirmed.

H. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(113) For the provisional determinations, underselling was calculated by comparing the exporters' Community frontier, ex quay, customs duty paid price level (DEQ) with the Community producers' verified ex-works target prices. The comparison was made by company on a prilled to prilled, granular to granular, bulk to bulk, and bagged to bagged level.

(114) Many exporting producers claimed that the adjustment made for unloading costs to arrive at the DEQ price was insufficient. It was also claimed that an importers' (mainly traders) margin should be included, in line with other recent fertiliser cases.

(115) Further evidence of actual unloading costs incurred has been obtained from several sources, including the exporting producers, the Community industry, and independent importers.

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On the basis of this information, the allowance for unloading costs has been adjusted accordingly.

(116) The question of granting an adjustment for the importers' margin was considered on the merits of this particular investigation. It was found that exporting producers sold urea on the Community market via a number of channels, including directly to the end user. No evidence was provided that prices varied according to the channel used. Rather, it was found that in general, the selling prices did not depend upon the type of the customer. Nor were any significant differences found between the sales channels used by the Community industry and those used by the exporting producers. Accordingly the request for an adjustment for an importers' margin was rejected.

(117) A number of parties, including the majority of the exporting producers, claimed that the Community producers' prices for the underselling calculation should be the weighted average price at the Community industry level and not the price at the individual producer level. It was claimed that such a methodology served to artificially inflate the margin by eliminating any negative underselling at the Community producer level. In addition it was claimed that basing anti-dumping duties on a calculation methodology which results in zeroing, contravenes a recent WTO ruling ([1]).

(118) It should be noted that the underselling calculation aims to examine the actual extent of injury suffered by the Community industry caused by dumped imports. To show a true picture any price comparison should reflect economic reality. The investigation showed that competition on the Community market takes place between each individual exporting producer and each individual producer which forms part of the Community industry. In this respect it is noted, *inter alia*, that there are significant price spreads and important differences in the location of the Community producers. Thus, the extent of any injurious dumping caused by an exporting producer to the Community industry should be assessed on the actual market situation and on the basis of specific data verified for each company.

(119) Comparing prices company by company results in a precise evaluation of the full impact of any injurious dumping suffered by the Community industry, and does not artificially inflate the level of underselling in the current case. Accordingly the claim is rejected.

(120) The Community industry claimed that some of the urea imported into the Community was in fact a ‘fat’ prill, which should be treated as a separate type of urea. It was further claimed that, for the underselling calculation, this type should be compared to the price of Community produced ‘fat’ prill.

(121) It was found that large diameter or ‘fat’ prills were indeed produced by the Community industry as well as being exported to the Community from some of the countries concerned. However the only difference to standard prills is in their larger diameter. Nor is there is any evidence to suggest that the cost of production is any higher or that ‘fat’ prills were sold at a premium during the IP. Accordingly, it is concluded that there are no reasons why ‘fat’ prills should be considered as a separate product type.

(122) Some exporting producers repeated their claim for an adjustment for quality of their product. However, no supporting evidence was provided. Nor was any market perception of quality

([1]) European Communities — Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India — AB-2000-13 — Report of the Appellate Body 1.3.2001.

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problems with Romanian urea found. The claim is therefore rejected.

(123) It should be noted that for calculating the non-injurious price at the provisional stage, a profit margin of 8 % on cost was used and not 8 % on turnover as stated at recital 222 of the provisional Regulation. Certain cooperating parties argued that the profit margin should be limited to 5 %, as was the case in previous anti-dumping proceedings concerning nitrate fertilisers as well as in the proceeding concerning urea from Russia [1]. For its part, the Community industry re-stated its claim that a profit margin of 15 % return on capital employed (ROCE) would be more appropriate.

(124) It is confirmed that the determination of the relevant profit margin in this proceeding is based on an assessment of the profit margin that the Community industry could reasonably have counted upon under normal conditions of competition, in the absence of dumped imports. It is therefore based on an assessment of the facts in this case and not on the assessment of the facts in other proceedings concerning other products and/or other investigation periods.

(125) For the reasons stated at recital 223 of the provisional Regulation, the claim that profitability be based on ROCE is rejected.

(126) Given the above, and in the absence of any evidence that the determination of an 8 % profit margin is incorrect, the conclusions of recitals 221 to 227 of the provisional Regulation are confirmed.

(127) Finally, information received and data verified following publication of the provisional Regulation, including verified information from two further Community producers, was also incorporated into the calculations, where appropriate.

2. **Level and form of the duties**

(128) In light of the foregoing, it is considered that, in accordance with Article 9(4) of the Basic Regulation, definitive anti-dumping duties should be imposed at the level of the injury margins or dumping margins found, on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine, whichever are the lower.

(129) As regards the residual duty to be applied to the non cooperating exporting producers, the residual duty was fixed on the basis of the highest duty rate established for the cooperating exporters in each country.

(130) One exporting producer claimed that, in order to be consistent with a previous proceeding, the duties should take the form of a minimum import price, as is the case for urea from Russia.

(131) However, as stated at recital 231 of the provisional Regulation, in order to ensure the efficiency of the measures and to discourage the price manipulation which has been observed in some previous proceedings involving the same general category of product, i.e. fertilisers, definitive duties should take the form of a specific amount per tonne. The claim is, therefore, rejected.

(132) On the basis of the above, the definitive duty amounts are as follows:

Country	Company	Basis for AD duty (%)	Definitive duty (Euro per tonne)
Belarus	Single country-wide margin	8,0	7,81

[1] Council Regulation (EC) No 901/2001 of 7 May 2001 imposing a definitive anti-dumping duty on imports of urea originating in Russia (OJ L 127, 9.5.2001, p. 11).

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Country	Company	Basis for AD duty (%)	Definitive duty (Euro per tonne)
Bulgaria	Chimco AD	24,2	21,43
	Others	24,2	21,43
Croatia	Petrokemija d.d.	9,4	9,01
	Others	9,4	9,01
Estonia	JSC Nitrofert	11,4	11,45
	Others	11,4	11,45
Libya	National Oil Corporation	12,5	11,55
	Others	12,5	11,55
Lithuania	Joint Stock Company Achema	10,0	10,05
	Others	10,0	10,05
Romania	S.C. Amonil S.A., Slobozia	6,7	7,20
	Petrom S.A. Sucursala Doljchim Craiova, Craiova	5,7	6,18
	Sofert S.A., Bacau	7,6	8,01
	Others	7,6	8,01
Ukraine	Open Joint Stock Company Cherkassy Azot, Cherkassy	18,7	16,27
	Joint Stock Company DniproAzot, Dniprodzerzinsk	9,2	8,85
	Others	19,5	16,84

(133) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of product originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(134) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if

[1] Commission of the European Communities
Directorate-General Trade
TERV 00/13
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

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appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

3. **Collection of provisional duties**

(135) In view of the magnitude of the dumping margins found and in the light of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

4. **Undertakings**

(136) Subsequent to the imposition of provisional measures, exporting producers in Belarus, Croatia, Libya, Romania and the Ukraine offered price undertakings in accordance with Article 8(1) of the Basic Regulation. The exporting producers in Estonia and Lithuania renewed their undertaking offers, already made at provisional stage, but which had been rejected for the reasons set out in recital 236 and 237 of the provisional Regulation.

(137) It is recalled that the Commission had already accepted an undertaking from the Bulgarian exporting producer at the provisional stage of this proceeding (see recital 236 of the provisional Regulation). As mentioned in recital 128, the incorporation of new data in the definitive injury margin calculation had an impact on the injury elimination level found. The minimum price of the undertaking was therefore adapted accordingly.

(138) Subsequent to the disclosure of the provisional findings, the complainant Community industry objected to the Commission's decision to accept an undertaking from the Bulgarian exporting producer. In this respect, it was argued that the company concerned was related — or had close technical and industrial relations — to other exporters and/or producers of nitrogen fertilisers including urea, located in Bulgaria, Belarus and the Ukraine which would constitute a strong potential for compensatory arrangements. Furthermore, the Community industry raised concerns regarding the ability of this exporting producer to fulfil the obligations of an undertaking.

(139) On a more general basis, the Community industry claimed that undertakings, and thus minimum prices, would be an inappropriate measure with regard to nitrogen fertilisers including urea.

(140) It should be noted that the Community industry could not support the allegations made with regard to the exporting producer in Bulgaria by sufficient evidence. Furthermore, the investigation of the Commission did not confirm these allegations and they had therefore to be rejected. As far as the appropriateness of the undertaking is concerned it should be noted that such assessment should primarily focus on the company specific situation. Thus, it was found that the company concerned produces and exports only urea and that an effective monitoring of the undertaking is most likely in this case.

(141) In any case, in the event of suspected breach, breach or withdrawal of the undertaking an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the Basic Regulation.

(142) All other undertaking offers received were also analysed in detail. Two main obstacles to the acceptability of these undertaking offers resulted from this examination:

(143) The exporting producers concerned in Lithuania, Romania, Croatia, Ukraine and Libya are producers of different types of

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fertilisers and/or other chemical products and have consistently in the past exported these products to common customers (mostly traders) in the Community. This practice raises a serious risk of cross-compensation i.e. that any undertaking prices would be formally respected but that prices for products not concerned would be lowered. All this would render the commitment to respect a minimum price for urea easy to circumvent and extremely difficult to monitor effectively.

(144) Furthermore, certain producers (vg: Estonia, Ukraine, Belarus) claimed that they had no control over, or even knowledge of the destination and/or sales conditions of their exports of urea, while it was clear from official statistics that the product was exported to the Community in large quantities during the investigation period. It is recalled that given that these companies did not provide sufficient information in this respect, the Commission had no option but to make use of facts available in accordance with Article 18 of the Basic Regulation to establish export prices. In addition, certain exporters (Libya, Estonia) provided overall a deficient level of cooperation during the investigation. It was considered that these facts render the risk of accepting an undertaking unreasonably high and the guarantees to assure a proper monitoring unsatisfactory.

(145) For the reasons set out above, it was therefore concluded that none of the undertakings offered subsequent to the disclosure of the definitive findings should be accepted.

(146) The interested parties were informed accordingly and the reasons why the undertaking offered could not be accepted disclosed in detail to the exporters concerned. The Advisory Committee has been consulted,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of urea, whether or not in aqueous solution, falling within CN codes 3102 10 10 and 3102 10 90 originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine.

2. The rate of the definitive anti-dumping duty, applicable, before duty, to the net, free-at-Community frontier price of the product described in paragraph 1 above, shall be as follows:

Country of origin	Produced by	Definitive anti-dumping duty (euro per ton)	TARIC additional code
Belarus	All companies	7,81	—
▼M2 Bulgaria	All companies	21,43	—
▼B Croatia	All companies	9,01	—
Estonia	All companies	11,45	—
Libya	All companies	11,55	—

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Country of origin	Produced by	Definitive anti-dumping duty (euro per ton)	TARIC additional code
▼M1 Lithuania	All companies	10,05	A999
▼B Romania	S.C. Amonil SA, Slobozia	7,20	A264
	Petrom SA Sucursala Doljchim Craiova, Craiova	6,18	A265
	Sofert SA, Bacau	8,01	A266
	All other companies	8,01	A999
Ukraine	Open Joint Stock Company Cherkassy Azot, Cherkassy	16,27	A268
	Joint Stock Company DniproAzot, Dniprodzerzinsk	8,85	A269
	All other companies	16,84	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 22 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ([1]) the amount of anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are produced and directly exported (i.e. shipped and invoiced) to the first independent customer in the Community acting as an importer by the company named below which has offered undertakings accepted by the Commission, when such imports are in conformity with paragraph 2.

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Country	Company	TARIC additional code
▼M2 ———		
▼M1 Lithuania	Joint Stock Company Achema, Taurostos 26, 5005 Jonava	A375

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2. (a) When the declaration for release for free circulation pursuant to an undertaking is presented, exemption from the duty shall be conditional upon presentation of a valid commercial invoice, issued by the company listed in paragraph 1, to the Member States customs authorities.

(b) The undertaking invoice shall conform with the requirements for such invoices set out in the undertaking accepted by the

([1]) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 993/2001 (OJ L 141, 28.5.2001, p. 1).

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Commission, the essential elements of which are listed in the Annex.

(c) Exemption from the duty shall further be conditional on the goods presented to customs corresponding precisely to the description on the commercial invoice.

3. Imports accompanied by such an undertaking invoice shall be declared under the TARIC additional code provided in paragraph 1.

Article 3

The amounts secured by way of the provisional anti- dumping duty imposed pursuant to Regulation (EC) No 1497/2001 shall be definitively collected at the rate of the duties definitively imposed on imports of urea, whether or not in aqueous solution, falling within CN codes 3102 10 10 and 3102 10 90 originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine.

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The amounts secured in excess of the definitive rate of anti-dumping duties shall be released. In cases where the rate of definitive duty imposed is higher than the rate of the provisional duty, only amounts secured at the level of the provisional duty shall be definitively collected.

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Article 4

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.

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ANNEX

The following elements shall be indicated in the commercial invoice accompanying the Company's sales of urea to the Community which are subject to the Undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'
2. The name of the company mentioned in Article 2(1) issuing the commercial invoice
3. The commercial invoice number
4. The date of issue of the commercial invoice
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier
6. The exact description of the goods, including:
   - — the Product Code Number (PCN)
   - — the description of the goods corresponding to the PCN (i.e. 'PCN 1 urea in bulk', 'PCN 2 urea, bagged')
   - — the company product code number (CPC) (if applicable)
   - — CN-code
   - — quantity (to be given in tonnes)
7. The description of the terms of sale, including:
   - — price per tonne
   - — the applicable payment terms
   - — the applicable delivery terms
   - — total discounts and rebates
8. Name of the company acting as an importer to which the invoice is issued directly by the company
9. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export by [company name] to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [company name], and accepted by the Commission of the European Communities through [Regulation (EC) No 1497/2001]. I declare that the information provided in this invoice is complete and correct.'