

**COMMISSION REGULATION (EEC) No 3983/86  
of 22 December 1986**

**introducing safeguard measures on imports into Spain of urea originating in  
certain third countries**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 288/82 of 5 February 1982, on common rules for imports<sup>(1)</sup>, as amended by Regulation (EEC) No 1243/86<sup>(2)</sup>, and in particular Article 15 (1) thereof,

After consultations within the advisory committee set up by that Regulation,

Whereas :

**A. PROCEDURE**

1. The Spanish authorities informed the Commission by letter of 30 May 1986 that imports of urea from the countries covered by Council Regulation (EEC) No 288/82 had been and were still increasing by such amounts and on such terms as to cause or threaten to cause substantial injury to the Spanish industry concerned. The Spanish authorities requested that measures to restrict imports be taken within five days.
2. After consultations the Commission concluded that the information submitted to it was not sufficient to justify adoption of the measures requested and that the most which could be done was to initiate a Community investigation proceeding on the trend of imports into Spain of urea originating in countries covered by Regulation (EEC) No 288/82, the terms of such imports and their effects on Community production.
3. By a notice published in the *Official Journal of the European Communities*<sup>(3)</sup>, the Commission announced the initiation of this proceeding. At the same time it began its investigation.
4. The Commission officially informed the non-Community exporting countries known to be concerned, the importers known to it and the two

Spanish producers concerned. It gave the parties concerned the opportunity of making their views known in writing and of requesting a hearing, if necessary.

5. The producers concerned and a number of importers took the opportunity to make their views known in writing by replying to questionnaires sent to them. Some of them asked to be heard orally by the Commission and were.
6. In addition to the producers and importers referred to above, the Commission received written submissions from Spanish users of the product concerned and, in certain cases, granted them a hearing: undertakings producing compound fertilizers and urea glues and resins, and the National Farmers Confederation. The Common Market Committee of the Nitrogenous and Phosphatic Fertilizers Industry also submitted written comments to the Commission.
7. During the investigation the Spanish authorities requested the Commission, by letter of 22 July 1986 and further letters received on 1 and 4 August, to take urgent measures concerning imports into Spain of urea originating in the countries covered by Regulation (EEC) No 288/82.
8. This request was backed up by information on the past and likely future trend of imports of the product in question, the terms of such imports and their effects of Spanish production of urea.
9. Having found the information supplied by the Spanish authorities to be largely confirmed by the preliminary results of the current Community investigation, the Commission decided after consultations that the critical situation of the Spanish industry concerned required, pending an overall assessment of the situation, in the light of all the relevant factors and on the basis of the definitive results of that investigation, that imports into Spain of urea from non-Community countries covered by Regulation (EEC) No 288/82 should be limited to 15 000 tonnes up to 31 October 1986. To this end it adopted a Regulation (EEC) No 2565/86<sup>(4)</sup>.

<sup>(1)</sup> OJ No L 35, 9. 2. 1982, p. 1.

<sup>(2)</sup> OJ No L 113, 30. 4. 1986, p. 1.

<sup>(3)</sup> OJ No C 154, 20. 6. 1986, p. 2.

<sup>(4)</sup> OJ No L 229, 15. 8. 1986, p. 8.

10. The Commission officially informed the producer countries and exporters currently concerned or likely to be concerned and offered them, as necessary, the possibility of consultations. None of those countries took advantage of this possibility.

11. During its investigation the Commission endeavoured to collect and verify all the information it considered necessary. To this end Commission staff went to following companies or organizations:

*A. Spanish producers of urea:*

Empresa Nacional de fertilizantes, SA (ENFERSA), Madrid,

Unión Explosivos Río Tinto, SA (ERT), Madrid.

*B. Processing industry and/or importers*

1. Producers of compound fertilizer:

CROS, SA Madrid

Asociación de Pequeñas y Medianas Empresas Españolas Fabricantes de Fertilizantes (CARILLO SA, Industrias y Abonos de Navarra SA, MIRAT, SA), abbreviated as FERTIPYME (Madrid);

2. Producers of urea glues and resins:

— AICAR, SA (Madrid),

— Derivados Forestales, SA (Madrid),

— Formol y Derivados, SA (Madrid);

3. Importers/distributors:

AGROX SA (Madrid).

*C. Other users*

Confederación Nacional de Agricultores y Ganaderos

12. On 31 October 1986 the Commission, having been unable to terminate the investigation, which had proved to be more complicated than initially foreseen, decided to extend the provisional measures until 30 November 1986 and to increase the quota for imports of urea from the non-Community countries covered by Regulation (EEC) No 288/82 from 15 000 to 20 000 tonnes. It did so by Regulation (EEC) No 3339/86<sup>(1)</sup>. By Regulation (EEC) No 3674/86 of 1 December 1986<sup>(2)</sup> it was decided to extend the validity of these measures to 31 December 1986 and to increase the quota from 20 000 to 25 000 tonnes.

13. The Commission officially informed the producer countries currently concerned or likely to be concerned.

**B. PRODUCT CONCERNED**

14. The product covered by the the investigation is urea containing more than 45 % by weight of nitrogen on the dry anhydrous product.

15. The product falls within within subheading 31.02 B of the Common Customs Tariff corresponding to NIMEXE code 31.02-15.

16. The imports concerned are those into Spain of such urea originating in the third countries covered by Regulation (EEC) No 288/82, i.e. from all countries other than the Member States and the third countries covered by Regulations (EEC) No 1765/82<sup>(3)</sup> and (EEC) No 1766/82<sup>(4)</sup>.

**C. TREND OF IMPORTS**

17. Available figures show that the volume of imports into Spain of urea originating in the third countries covered by Regulation (EEC) No 288/82 has increased substantially in 1986, both in absolute terms and relative to Spanish production and consumption.

**1. Increase in absolute terms**

18. Official statistics show imports from non-Community countries to have increased in the first six months of 1986 to 39 953 tonnes, whereas for 1982 to 1985 the average was only 0,15 tonnes.

At the end of July and August 1986 the figures were 62 523 tonnes and 101 194 tonnes respectively. The monthly figures show a sudden increase in June, July and August of 1986, from 4 906 tonnes at the end of May to 101 194 tonnes at the end of August.

**2. Increase relative to domestic consumption**

19. Annual domestic consumption is estimated at about 591 000 tonnes and the market share accounted for by the imports concerned has risen significantly. From 0 % at the end of 1985 it rose to 6,76 % at the end of June 1986, 10,49 % at the end of July and 17,12 % at the end of August<sup>(5)</sup>.

<sup>(1)</sup> OJ No L 195, 5. 7. 1982, p. 1.

<sup>(2)</sup> OJ No L 195, 5. 7. 1982, p. 21.

<sup>(3)</sup> For the trend in the market share of urea from 'other' countries, see paragraph 44 below.

<sup>(4)</sup> OJ No L 306, 1. 11. 1986, p. 47.

<sup>(5)</sup> OJ No L 339, 2. 12. 1986, p. 21.

## D. TERMS OF IMPORT

20. The information gathered indicates that these imports were effected, over the period 1 January to 1 August 1986, at an average price of Pta 12,76/kg.
21. The monthly figures show that import prices fell progressively over the same period, from an average of Pta 16,03/kg at the end of March to 15,96 at the end of May, 13,39 at the end of June, 12,62 at the end of July and 11,86 at the end of August.
22. A comparison of prices for urea imported from outside the Community during this period with the average net ex-works price of urea made in Spain, charged during 1985 by the Spanish producers concerned, shows significant differentials, the import prices being from 51 to 64 % lower than the prices of the Spanish product.
23. It was also established that the average price of imports from non-Community countries over the same period was appreciably lower than the cost price of the two producers concerned, the undercutting varying between 26 and 49 %.

## D. EFFECTS OF IMPORTS ON SPANISH PRODUCTION

## 1. Spanish production concerned

24. When the investigation was initiated, Spain had only two enterprises left producing urea: the Empresa Nacional de Fertilizantes SA, entirely controlled by the State, and Unión Explosivos Río Tinto SA, belonging to the private sector.
25. Until 29 March 1986 there was a third producer, the CROS company, whose nominal annual production capacity was about 100 000 tonnes. Of this some 63 000 tonnes went for the manufacture of compound fertilizer (NPK) sold on the Spanish market. The company's profitability was judged to be inadequate and the Spanish authorities had asked it to close its urea production plant at Malaga by 30 June 1986. The company closed the plants

of its own accord on 29 March, considering that it was economically more advantageous to import the urea rather than to maintain unprofitable production temporarily.

26. The urea production units of the two current producers are at Puertollano (Castile-La Mancha), Cartagena (Murcia) and Huelva (Andalusia); all three are in particularly disadvantaged regions, with a level of economic development considerably below that of other parts of Spain.
27. Both undertakings are engaged in the fertilizer sector, where there is a national restructuring plan the basic aims of which are to improve the profitability of the undertakings concerned and, for strategic reasons, to ensure sufficient supplies of fertilizers of Spanish origin to cover domestic demand.
28. The plan provides for improving the profitability of the two undertakings by modernizing their production plants. Considerable subsidies have so far been granted for the manufacture of ammonia, the raw material used by them in making urea.
29. An appropriation of Pta 8 234 million is available under the general State budget to finance investment to enable them to produce ammonia from natural gas instead of naphtha.
30. In addition, ENAGAS has agreed to finish by 1 January 1988 at the latest its construction work on terminals to ensure supplies of natural gas for the production plants at Huelva and Cartagena.
31. The effect of the trend of imports into Spain as described above, on the terms mentioned above, has thus been assessed in relation to these two producers.
32. For this purpose the Commission considered that it should first establish a picture of the situation of the two undertakings at 31 December 1985, then examine to what extent their situation had changed during 1986 and decide whether the changes occurring showed that there was any substantial injury or threat thereof and whether this injury or threat of injury was due to the imports of urea from the non-Community countries in question.

## 2. Situation of the two Spanish producers at 31 December 1985

33. The nominal production capacity of the two undertakings concerned amounted at the end of 1985 to 550 000 tonnes, the same figure as for the period 1982 to 1984, corresponding to a nominal monthly capacity of the order of 50 000 tonnes.
34. In all, the two companies had produced 475 522 tonnes of urea at the end of 1985. The rate of utilization of their nominal capacities was thus 86,46 %. At the same time their stocks at the plants amounted to 37 957 tonnes.
35. Their net turnover on the Spanish market for the product concerned was, at the end of 1985, Pta 14 175 million, corresponding to sales of 431 957 tonnes of urea.
36. The average net ex-works prices charged by the two companies on the domestic market in 1985, after deduction of all rebates, were Pta 32 487 and 33 467 per tonne, while the corresponding cost prices were Pta 28 335 and 28 159 per tonne.
37. At the time the two plants employed a total of 9 812 people. Of these, 4 764 were employed in the fertilizer sector, including 595 directly concerned in the product covered by the investigation.

## 3. Trend in 1986

38. The information available to the Commission indicates that at the end of June, July and August 1986 the Spanish industry's output amounted to 244 316, 266 112 and 280 056 tonnes respectively, whereas the corresponding figures for 1985 were 260 118, 284 756 and 319 355 tonnes. Thus, the Spanish industry's production fell by 6,07, 6,55 and 12,31 % at the end of June, July and August 1986 respectively. Over the same period one of the two producers concerned had been obliged to close its production units and temporarily lay off all its staff of 670 people.
39. Similarly the utilization rate of the Spanish producers' capacities fell from 86,46 % at the end of 1985 to 80,90, 75,39 and 69,49 % at the end of June, July and August 1986, whereas the corresponding figures for 1985 had been 86,13, 80,67 and 79,24 %.
40. Total sales by the Spanish producers at the end of June, July and August 1986 amounted to 193 735, 214 489 and 223 779 tonnes respectively, as against

233 466, 249 258 and 258 216 tonnes for the same months of 1985, representing a decrease of the order of 13,34 %. The Spanish producers' market share fell from about 95 % in 1985 to 51 % at the end of August 1986.

41. The average weighted net ex-works price of the producers concerned had been Pta 32 867 per tonne in 1985 and fell during the first six months of 1986 to Pta 29 241, a fall of 11,03 %. At the end of July and August 1986 the fall was even greater, as average prices were only Pta 28 841 and 28 618, a fall of 13 % against the 1985 price.
42. Although the producers concerned have not been able to supply precise information as to their profits and losses and the return on their investment in 1986, it is clear in the light of the information concerning their volume of sales and their prices over the period that their situation has grown worse as against the corresponding period of 1985. At 31 August 1986 net profits lost by the two producers concerned, on the basis of these two parameters, may be put at Pta 165 605 779 at least.

## 4. Existence of injury and causal link

### (a) Existence of injury

43. In the light of the information given above, it is clear that the Spanish industry, in which there has been a considerable decline in production, rate of use of capacity, volume of sales, turnover and prices, did suffer injury in 1986, and this injury might have been much greater if the two producers concerned had not benefited from the closure on 29 March 1986 of the CROS company's urea production unit.

### (b) Causal link with imports originating in the non-Community countries concerned

44. On the basis of the information obtained by the Commission regarding the pattern, up to 31 August 1986, of imports into Spain of urea originating in countries other than those covered by Regulation (EEC) No 288/82 (imports originating in other Member States: 92 481 tonnes at the average price of Pta 18,04/kg; imports originating in countries covered by Regulation (EEC) No 1765/82: 22 205 tonnes at the average price of Pta 16,54/kg), it cannot be asserted that the injury suffered by the Spanish industry is due entirely to imports originating in the countries covered by Regulation (EEC) No 288/82 (101 194 tonnes at the average price of Ptas 12,76/kg).

45. Even though they are not the sole cause of the injury suffered by the Spanish industry during the first eight months of 1986, they have nevertheless played a significant role, since, as they progressively increased in volume, they reduced the Spanish producers' market share and forced them to reduce their selling prices.
46. Irrespective of the role played by imports originating in the other Member States and in Eastern Europe, imports originating in non-Community countries covered by Regulation (EEC) No 288/82 have undeniably caused Spain's urea industry a certain degree of injury.

#### 5. Threat of substantial injury

47. On the basis of the information concerning imports of urea from the non-Community countries covered by Regulation (EEC) No 288/82 during the first eight months of the year, and in particular the rate at which they increased and the degree to which they undercut Spanish producers' net selling prices, despite the significant reduction (about 22 %) in Spanish producers' cost price as a result of the drop in naphtha and fuel oil prices since the beginning of August of this year, these imports may be said to present a threat of substantial injury to Spain's urea industry.
48. It should be pointed out in this connection that there is surplus production capacity at world level and a number of traditional markets have disappeared (India, China, Iran and the Far East); combined with these factors there is also the fall in the dollar, the currency generally used for invoicing imports.
49. Given the attractiveness of the Spanish market as a result of its high prices and the drop in customs duties following Spain's accession to the Community, a further increase in imports into Spain of urea originating in non-member countries can be expected, unless trade protection measures are adopted in respect of imports originating in countries covered by Regulation (EEC) No 288/82.

#### E. COMMUNITY INTEREST

50. Now that it has been established that imports into Spain of urea originating in the countries covered by Regulation (EEC) No 288/82 during the period in question were effected in such quantities and on

such terms that substantial injury has been, or could be caused to the Spanish industry, it must be determined whether regional protective measures for Spain's urea industry are necessary in the Community interest.

51. Given the gravity of the situation, as described above, the Commission has concluded that certain regional protective measures should be applied, for a limited period, for the benefit of Spain's urea producers, in respect of imports of urea originating in non-Community countries to which Regulation (EEC) No 288/82 applies, including those with which the Community has an agreement establishing free trade arrangements.
52. In this respect, the Commission has noted, subject to the examination being undertaken pursuant to the dispositions concerning existing aids, that the completion of the Spanish reconversion plan in the fertilizer sector adopted in 1985 will permit, according to the figures submitted by the Spanish authorities, this industry to become more competitive and in time able to operate without subsidy while at the same time protecting a certain level of employment in regions which are particularly disadvantaged.
53. It is nevertheless in the Community interest to ensure that these measures do not jeopardize the profitability of the processing firms in Spain and the jobs these firms provide. The opening of a quota of 50 000 tonnes specifically intended to supply raw materials to firms which produce urea glues and resins and compound fertilizers should enable this objective to be met — given that a certain degree of preference should be accorded in the granting of import opportunities to imports from the other Member States — and should protect Spain's urea industry until 31 December 1987, by which time its plant should have been modernized.

The opening up of the Spanish market, since Spain joined the Community, to fertilizers other than urea, originating in the other Member States and non-Community countries, has enabled, and should continue to enable, other Spanish businesses, including farms and distributors/retailers of fertilizers, to improve their position. Their situation is objectively different from that of the manufacturing industries and so does not justify the adoption for them of a measure similar to that planned for the manufacturing industries.

54. The Community's interest as a trading partner demands that the opening of the quota should first of all benefit imports of urea originating in countries with which the Community has free trade arrangements or countries which are Contracting Parties to the GATT, with any surplus being shared between the countries which are covered by Regulation (EEC) No 288/82 but do not belong to one of the abovementioned two categories.
55. Lastly, in view of the fact that the measures adopted under this Regulation merely confirm the withdrawal of liberalization resulting from the provisional measures introduced by Regulation (EEC) No 2565/86 as amended by Regulations (EEC) No 3339/86 and (EEC) No 3674/86, no further exemptions need be provided for in the case of contracts still in force and goods already being transported,
2. The measures provided for in paragraph 1 shall apply to imports originating in the third countries covered by Regulation (EEC) No 288/82, including those with which the Community has an agreement establishing free trade arrangements.
3. The authorizations referred to in paragraph 1 shall be granted by the Spanish authorities up to a total quota of 50 000 tonnes intended solely for ensuring supplies of raw materials to producers of urea glues and resins and to producers of compound fertilizers.
4. The authorizations referred to in paragraph 3 shall be granted first of all for imports of urea originating in countries with which the Community has an agreement establishing free trade arrangements or which are Contracting Parties to the GATT. Any surplus under the quota shall be shared between countries which do not belong to either category.

HAS ADOPTED THIS REGULATION :

*Article 1*

1. Imports into Spain of urea containing more than 45 % by weight of nitrogen on the dry anhydrous product, falling within subheading 31.02 B of the Common Customs Tariff, corresponding to NIMEXE code 31.02-15, shall be subject to presentation of an import authorization issued by the Spanish authorities.

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

Done at Brussels, 22 December 1986.

*For the Commission*

Willy DE CLERCQ

*Member of the Commission*

*Article 2*

The Community proceeding conducted in order to investigate the imports into Spain referred to in Article 1 (1) is hereby terminated.

*Article 3*

This Regulation shall enter into force on 1 January 1987. Subject to any amendment under Article 18 of Regulation (EEC) No 288/82, it shall apply until 31 December 1987.