

COUNCIL REGULATION (EEC) No 191/80

of 29 January 1980

imposing a definitive anti-dumping duty on lithium hydroxide originating in the United States of America and the Soviet Union

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾,

Having regard to the proposal submitted by the Commission after consultation with the Advisory Committee set up under Article 6 of Regulation (EEC) No 3017/79,

Whereas in February 1979 the Commission received a complaint submitted by CEFIC, the European Council of Chemical Industry Federations, on behalf of Metallgesellschaft AG, Frankfurt, the sole Community producer of lithium hydroxide, setting out evidence as to the existence of dumping of the like product originating in the United States of America and the Soviet Union and of material injury resulting therefrom ;

Whereas, since there was sufficient evidence to justify initiating a proceeding the Commission published in the *Official Journal of the European Communities* of 19 May 1979 a notice of the initiation of an anti-dumping procedure concerning imports of lithium hydroxide originating in the United States of America and the Soviet Union⁽²⁾, so advised the exporters and importers known by the Commission to be concerned, as well as representatives of the United States and the complainants and commenced the investigation at Community level ;

Whereas, for the purposes of a preliminary determination of the dumping margin and of injury, the Commission sought and verified all information it deemed to be necessary and made an on the spot investigation of the two American producers, Foote Mineral Company, Exton, Pennsylvania, and Lithium Corporation of America, Gastonia, North Carolina, of the Community producer, and of a Community importer whose operations required similar investigation ; whereas an on the spot investigation of another importer proved impossible owing to his refusal to permit it ;

Whereas, for the preliminary examination of dumping by American producers, the Commission compared their export prices to the Community with those ruling on the American market ;

Whereas weighted averages were used for these comparisons, which were made at the ex-factory level for sales over the period 1 January to 30 April 1979, account being taken, in so far as this was requested, of differences in the terms and conditions of sale bearing a direct relationship to the sales under consideration, that is to say those relating to transport costs and selling expenses ; whereas the amount of the selling expenses was determined by reference to the costs incurred by the seller ; whereas, in the absence of sufficient evidence in support of Lithium Corporation's claim that there were absolutely no selling expenses on exports to the Community, the breakdown of these costs was based on the available accounting data, allocated in proportion to the turnover for each product and market under consideration ; whereas the exporter in question requested in addition a supplementary adjustment for certain overheads and administrative expenses ; whereas, in the absence of sufficient proof as to the direct relationship of these overheads with the sales under consideration, the Commission was not able to take this request into account ;

Whereas, when determining the existence of dumping on imports from the Soviet Union, the Commission had to take account of the fact that the Soviet Union is a non-market economy country ;

Whereas, for this reason, the Commission has based its preliminary dumping calculations on the prices at which the like product is sold for consumption on the domestic market of a market economy third country ;

Whereas a comparison with prices at which the like product is sold for consumption on the domestic market of the United States of America adjusted to take into account differences in conditions and circumstances of sale appeared to be appropriate and not unreasonable since the United States is the only market economy non-member country producing and exporting this product in substantial quantities ;

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No C 126, 19. 5. 1979, p. 2.

Whereas, with regard to injury to the industry concerned, the evidence available to the Commission during the preliminary examination showed that imports into the Community of lithium hydroxide originating in the United States of America and the Soviet Union had increased from 988 tonnes in 1976 to 1 237 tonnes in 1978; whereas the imports into the Community of the product in question reached a market share of 58 % in 1976 and 62 % in 1978 and were consequently having a considerable effect;

Whereas the consequential impact on the Community producer concerned consisted in stagnant production and sales, under-utilization of capacity, and a fall in the market share from 42 % in 1976 to 35 % in the first three months of 1979 placing it in an extremely difficult situation and causing it heavy losses on this product; whereas in the absence of defensive measures, the cessation of this line of production was envisaged which would have involved a reduction in personnel;

Whereas the dumped imports were considered to be manifestly the principal cause of the difficulties described above;

Whereas, since this preliminary examination of the matter showed that there was dumping, that there was sufficient evidence of injury and that the interests of the Community called for immediate intervention, the Commission, by Regulation (EEC) No 2391/79⁽¹⁾, imposed a provisional anti-dumping duty on lithium hydroxide originating in the United States of America and the Soviet Union;

Whereas in the course of the subsequent examination of the matter, completed after the imposition of the provisional anti-dumping duty, the interested parties had the opportunity to make known their views in writing, to be heard by the Commission and to orally develop their views, to inspect non-confidential information relevant to the defence of their interests and to be informed of the essential facts and considerations on the basis of which it was intended to make a final determination; whereas the Community producer and some of the exporters and importers concerned availed themselves of these possibilities by making known their views in writing and orally;

Whereas during the subsequent examination it was established that the domestic price in the United States of America, on which the determination of normal value was based, had increased by 9.3 % since the date of the preliminary determination of the dumping margin; whereas in consequence, for the definitive determination, it is necessary to adjust the normal value, on which the provisional duty was

based, by this amount in order to take account of the increase in the domestic United States price;

Whereas, with regard to all of the other elements affecting the dumping calculation, no new information was received or further arguments advanced which would have altered the calculations; whereas consequently the current dumping margins are 9.6 % for Lithium Corporation of America, 6.8 % for Foote Mineral Company and 8.9 % for Russian exports;

Whereas in the course of the subsequent examination of injury it was established that imports into the Community of lithium hydroxide originating in the United States of America and the Soviet Union had reached a level of 632 tonnes during the first six months of 1979; whereas the imports concerned reached a market share of 65 % during the same period and are consequently having an even greater effect on the market than that established during the preliminary examination;

Whereas the prices of these imports into the Community continue to exercise a depressive effect on the Community producer's prices, obliging it to continue to sell at prices below its production costs;

Whereas, with regard to all the other elements affecting the determination of injury, no new information was received nor further arguments advanced which could have altered that determination;

Whereas, therefore, the facts as finally established show that, due consideration having been given to the other factors having a bearing on the situation of this industry, for example, the decline of exports to countries outside the Community, the dumped imports are to countries outside the Community, the dumped imports are causing or threatening to cause material injury to the Community industry concerned;

Whereas, in these circumstances, protection of the Community's interests calls for the definitive collection of the amounts secured by way of provisional duty in respect of lithium hydroxide originating in the United States of America and the Soviet Union and for the imposition of a definitive anti-dumping duty; whereas the amount of this duty should correspond to the amount by which import prices into the Community fall below the lowest normal value for the exporters involved adjusted to a free-at-Community-frontier basis;

Whereas in order to avoid evasion of the anti-dumping duty, it is necessary to provide that, where lithium hydroxide is not released for consumption by the first purchaser in the Community, there is an alternative procedure for the calculation of the duty;

⁽¹⁾ OJ No L 274, 31. 10. 1979, p. 26.

Whereas one of the American exporters, Foote Mineral Company, voluntarily undertook, prior to the imposition of the provisional duty, to increase its prices to levels which were considered satisfactory; whereas this undertaking was accepted by the Commission, which accordingly decided to terminate the procedure concerning this company and to exclude it from the application of the provisional duty; whereas this same company has meanwhile offered to bring its undertaking into line with the latest price level on the American market; whereas this new undertaking has been accepted by the Commission and consequently this company remains excluded from the application of the duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on lithium hydroxide falling within Common Customs Tariff subheading 28.28 B and corresponding to NIMEXE code 28.28-10, originating in the United States of America and the Soviet Union. This duty shall not apply to lithium hydroxide manufactured and exported by Foote Mineral Company, USA.

The provisions in force concerning customs duties shall apply to this duty.

2. Without prejudice to paragraph 5, the amount of this duty shall be equal to the amount per lb by which the free-at-Community-frontier price, before duty, to the first purchaser, is less than the normal value as defined in paragraph 3.

3. For the purposes of this Regulation, the normal value of lithium hydroxide originating in the United States of America and the Soviet Union, adjusted to a free-at-Community-frontier basis, before duty, shall be US \$1.59 per lb.

4. The normal value as referred to in paragraph 3 shall be net if the conditions of sale provide for payment within 30 days from the end of the month of delivery; it shall be increased by 1 % for each month by which the period for payment is increased and reduced by 1 % for each month by which that period is reduced.

5. (a) Where the product defined in paragraph 1 is not released for consumption on the basis of the price to the first purchaser in the Community, the definitive anti-dumping duty shall be at the following rates:

- 9.6 % of the normal value of US \$1.59 per lb for imports originating in the United States of America,
- 8.9 % of the normal value of US \$1.59 per lb for imports originating in the Soviet Union.

(b) Where, however, the declaring party can provide satisfactory proof to the customs authorities that the price paid by the first purchaser:

- (i) exceeds or is equal to the normal value of US \$1.59 per lb, no duty shall be applied, or
- (ii) is lower than the normal value of US \$1.59 per lb by less than 20 %, the duty shall be equal to the amount by which the said price is lower than the normal value.

Article 2

The amounts secured by way of provisional duty under Regulation (EEC) No 2391/79 shall be definitively collected.

Article 3

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

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

Done at Brussels, 29 January 1980.

For the Council

The President

F. EVANGELISTI