COMMISSION REGULATION (EEC) No 985/83

of 26 April 1983

imposing a provisional anti-dumping duty on imports of barium chloride originating in the People's Republic of China and the German Democratic Republic

THE COMMISSION 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), as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) In June 1982 the Commission received a complaint lodged by the Conseil Européen des Fédérations de l'Industrie Chimique (CEFIC) on behalf of a producer established in France who accounts for the bulk of Community production. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (3), the initiation of an anti-dumping proceeding concerning imports into the Community of barium chloride (crystallized and/or anhydrous) falling within subheading 28.30 A II of the Common Customs Tariff (NIMEXE code 28.30-20) and originating in the People's Republic of China and in the German Democratic Republic and commenced an investigation.

(2) The Commission officially so advised the exporters and importers known to be concerned and the representatives of the exporting countries and the complainant and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) All of the known exporters and most of the importers made their views known in writing ; the exporters and some of the importers have requested and have been granted hearings.

(4) The China National Chemicals Import and Export Corporation (China) requested an opportunity to meet the main Community producer for the purpose of presenting their opposing views. The Commission was prepared to grant this request but the Community producer refused to attend a meeting and it was not, therefore, possible to arrange a confrontation.

(5) A submission was made by only one Community purchaser or processor of the product concerned.

(6) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the Community producer, a major importer and a manufacturer of the product concerned in the analogue country for the purpose of establishing the normal value.

(7) The investigation of dumping covered the period August 1981 to July 1982.

B. Normal value

(8) In order to establish whether the imports from the People's Republic of China and from the German Democratic Republic were dumped, the Commission had to take account of the fact that these countries do not have market-economies and the Commission therefore had to base its determinations on the normal value in a market-economy country. In this connection the complainant had suggested the United States of America.

(9) The main importer of the product concerned originating in China objected to this suggestion on the grounds that the American producer is the only manufacturer of the product concerned in that country. This manufacturer was said, therefore, to benefit from a monopoly position enabling him to impose upon his customers prices which are higher than prices resulting from normal market conditions.

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 207, 10. 8. 1982, p. 5.

Furthermore, this importer suggested taking the ex-works prices of a manufacturer in the Federal Republic of Germany on 31 March 1981, the date on which the latter had to close down its factory and with whose clients the importer had then started doing business. The prices of this ex-manufacturer were said to have been established in free competition between the complainant and this ex-manufacturer and without influence from Chinese imports, which had to orient themselves to this established level.

(10) In view of the quantities of the product concerned of Chinese origin imported in the United States of America (varying between 32 and 45 %), the Commission is satisfied that there is sufficient internal competition in that country ensuring that price levels are in a reasonable proportion to production costs.

The Commission therefore concluded that it would be appropriate and not unreasonable to determine normal value on the basis of domestic prices in the United States of America.

Furthermore, the alternative suggested by the importer of the product originating in China would not have been acceptable to the Commission, since the prices suggested could not be considered as representative, particularly since they may have been at a loss, and fell outside the reference period.

(11) An importer of the product concerned originating in the German Democratic Republic suggested Spain as an analogue country. The Commission, however, did not accept this suggestion because the importer had not motivated its objection against the choice of the United States of America as an analogue country and the main importer of the product concerned originating in China considered Spain as an inappropriate alternative because the production unit in Spain was said not to be comparable to the one in China. The suggestion to take production costs of the EEC producers was also considered to be inappropriate since this is permissible only if there is no other adequate basis for the establishment of normal value.

C. Export price

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

D. Comparison

(13) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability, and in particular of differences in the payment and delivery terms.

(14) Some importers of the product concerned claimed adjustments of the normal value because of an alleged lower quality of the dumped product. Such adjustment cannot be made, however, since no proof was given.

(15) Furthermore, the main importer of the product concerned originating in China claimed adjustments of the normal value because of alleged cost advantages of the raw material in China and the different production process in China. Such an adjustment cannot be made, however, since it is uncertain how such advantages, if they really existed and were not counterbalanced by competitive disadvantages, would be reflected in the normal value, if the same conditions existed in the market-economy country used for establishing normal value. The American manufacturer of the product concerned, asked by the Commission to give his opinion on the alleged advantages, stated that he was not able to do so due to absence of accurate knowledge of the different production processes.

(16) All comparisons were made at ex-works level.

E. Margins

(17) The above preliminary examination of the facts shows the existence of dumping in respect of China National Chemicals Import and Export Corporation (People's Republic of China) and AHB Chemie-Export-Import (German Democratic Republic), the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

(18) The margin varies according to the exporting country concerned. The weighted average margin as determined for the product concerned originating in the People's Republic of China and in the German Democratic Republic exceeded 75 %.

F. Injury

(19) With regard to the injury caused by the dumped imports, the evidence available to the Commission shows that imports into the Community from the People's Republic of China of barium chloride increased from 3 088 tonnes in 1980 to 3 543 tonnes in 1982 with a consequent increase of the market share of 19 % for the market of crystallized barium chloride and of 12 % of the

combined market of crystallized and anhydrous barium chloride for the same period. The imports of these products reached, during the first two months of 1983, approximately 3 000 tonnes.

(20) Precise figures concerning the imports of the product concerned originating in the German Democratic Republic into the Federal Republic of Germany not being available, the Commission estimates on the basis of the information available that the total imports and market share have remained fairly stable during the last years, except with regard to the United Kingdom, where the imports and market share have increased significantly.

(21) The weighted resale prices of these imports undercut the prices of the Community producers during the investigation period by 14 and 11 % respectively. The resale prices of these imported products were lower than those required to cover the costs of Community producers and to provide a reasonable profit.

(22) With regard to the consequent impact on the main Community producer the evidence available to the Commission shows that total Community production dropped from 19 756 tonnes in 1980 to 12 206 tonnes in 1982. Furthermore, the evidence available to the Commission shows that the production and capacity utilization of the main Community producer dropped by 42 % in the same period.

(23) The pattern of stocks of the main Community producer was rather irregular between 1980 and 1982, but showed a tendency towards substantial increase.

(24) The EEC sales of crystallized barium chloride by the main Community producer dropped by 33 % between 1980 and 1982. Only the sales of anhydrous barium chloride to the main importer of the product concerned from China enabled the main Community producer to maintain his total sales figure of barium chloride in the EEC.

(25) The market share of crystallized barium chloride of the main Community producer dropped from 30 % in 1980 to 27 % in 1982. In order to avoid further injury from the main importer of barium chloride from the People's Republic of China, who could import anhydrous barium chloride in addition to the crystallized barium chloride or transform, directly or indirectly, imported crystallized barium chloride into anhydrous barium chloride, the main Community producer had no choice but to sign a pluri-annual supply contract of anhydrous barium chloride with the same importer. Due to this contract the main Community producer has been able to maintain its combined market share of crystallized and anhydrous barium chloride.

(26) The losses incurred by the main Community producer for the product concerned increased by a further 53 % between 1980 and 1982.

(27) The employment figures of the main Community producer for the product concerned have remained fairly stable since 1980. The continuation or increase of dumped imports from the exporting countries constitute, however, a serious threat of loss of employment.

(28) The Commission has considered whether injury has been caused by other factors such as the decline of the total consumption of the product concerned in the Community. However, the substantial increase of dumped imports and the prices at which they are offered for sale in the Community led the Commission to determine that the effects of the dumped imports of barium chloride originating in the People's Republic of China and the German Democratic Republic, taken in isolation, have to be considered as constituting material injury to the main Community producer concerned.

G. Community interest

(29) The main importer of barium chloride originating in the People's Republic of China argued that the introduction of protective measures would not be in the Community's interest because it would significantly increase the danger of the complainant obtaining a monopoly position and important branches of the Community's economy would be damaged by the higher price level. In view of the particularly serious financial difficulties which the main Community producer faces with the production and sale of the product concerned, and in order to avoid the closure of the plant of the main Community producer, which would make the Community to a significant extent dependent upon external suppliers of this product, the Commission has, however, come to the conclusion that it is in the Community's interest that action be taken. Furthermore, no satisfactory evidence had been advanced concerning the negative impact of protective measures on the users of the product involved. In order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti-dumping duty.

H. Rate of duty

(30) Having regard to the extent of the injury caused, the rate of such duty should be less than the dumping margins provisionally established but adequate to remove the injury caused.

(31) Having compared the complainant's weighted average prices and costs, taking into account its profit situation, with the individual importers' costs and special marketing conditions, where available, the Commission determined that injury would, at present, be removed if the amount of the duty corresponded to the amount by which the free-at-Community-frontier price, before duty, to the first importer in the importing Member State is less than 319 ECU.

(32) A period should be fixed within which the parties concerned may make their views known and request an oral hearing;

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on barium chloride falling within subheading 28.30 A II of the Common Customs Tariff (NIMEXE code 28.30-20) and originating in the People's Republic of China and in the German Democratic Republic.

2. The amount of the duty shall be equal to the amount by which the price per tonne net, free-at-Community-frontier, before duty, is less than 319 ECU.

The free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days from the date of shipment; they shall be increased or reduced by 1 % for each increase or decrease of one month in the period for payment.

3. The provisions in force concerning customs duties shall apply for the application of the duty.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views and apply to be heard orally by the Commission within one month of the entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 26 April 1983.

For the Commission

Wilhelm HAFERKAMP

Vice-President