COMMISSION REGULATION (EEC) No 2391/79

of 26 October 1979

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 459/68 of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community (1), as last amended by Regulation (EEC) No 1681/79 (2), and in particular Article 15 thereof,

After hearing the opinions expressed in the Advisory Committee set up under the said Regulation,

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 the information received indicated that the complaint was admissible and that defensive measures against dumping might be necessary, the Commission officially notified the importers and exporters known to be concerned, and 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 (3) ;

Whereas the Commission gave interested parties the opportunity to make known their views in writing ;

Whereas the Commission gave to parties directly concerned the opportunity orally to develop their views and to meet and to present opposing views and rebuttal arguments ;

Whereas, for the purposes of a preliminary determination of the dumping margin and of injury, the Commission 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 sport investigation of another importer proved impossible owing to his refusal to permit it ;

Whereas, to make a preliminary examination of the existence 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 during the period 1 January 1979 to 30 April 1979, account being taken, in so far as this was requested, of differences in the conditions of sale having a direct relationship with 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 proportionately 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, in the case of imports originating in the Soviet Union, the normal value was determined on the basis of the domestic price in the USA adjusted as described above ;

Whereas it emerges from the preliminary examination of the facts that dumping exists for all the imports examined, the weighted average margin being 9·3 % for Lithium Corporation of America, 8·1 % or Foote Mineral Company and 16·0 % for Russian exports ;

Whereas, with regard to injury to the industry concerned, the evidence available to the Commission shows that imports into the Community of lithium hydroxide originating in the United States of America and the Soviet Union have increased from 988 tonnes in 1976 to 1 237 tonnes in 1978 ; whereas the imports into the Community of the product in question

(1) OJ No L 93, 17. 4. 1968, p. 1.
(2) OJ No L 196, 2. 8. 1979, p. 1.
(3) OJ No C 126, 19. 5. 1979, p. 2.

reached a market share of 58 % in 1976 and 62 % in 1978 and are consequently having a considerable effect ;

Whereas the prices of these imports on the Community markets have been extremely low, thus exercising a depressive effect on the Community producer's prices, obliging it to sell at prices below its costs of production ;

Whereas this development has taken place to the detriment of this producer, 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 is envisaged, which would involve a reduction in personnel ;

Whereas the dumped imports are manifestly the principal cause of the difficulties described above ;

Whereas in these circumstances the interests of the Community call for immediate intervention consisting in the imposition of a provisional anti-dumping duty on imports of lithium hydroxide originating in the United States of America and the Soviet Union ; 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 Community frontier basis ;

Whereas one of the American exporters, Foote Mineral Company, has meanwhile voluntarily undertaken to increase its prices to levels which are considered satisfactory ; whereas this undertaking has been accepted by the Commission ; whereas it is consequently appropriate to exclude this firm from the application of this provisional duty,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional 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 by Foote Mineral Company, USA.

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

2. The amount of this duty shall correspond to the difference between the normal value as defined in paragraph 3 and the free Community frontier price, before duty, to the first importer.

3. For the purposes of this Regulation, the normal value of lithium hydroxide originating in the United States of America and the Soviet Union, brought up to a free Community frontier basis, before duty, shall be US $ 1·46 per lb.

4. The above normal value 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 or reduced by 1 % for each increase or decrease of one month in the time limit for payment.

Article 2

The entry of the product referred to in Article 1 into free circulation shall be conditional upon the deposit of security for the amount of the provisional duty.

Article 3

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

Without prejudice to the provisions of Article 16 and 18 of Regulation (EEC) No 459/68, it shall apply until the entry into force of an act of the Council either adopting definitive measures or extending the provisional duty, but in any event for a period not exceeding three months.

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

Done at Brussels, 26 October 1979.

For the Commission

Claude CHEYSSON

Member of the Commission