COUNCIL REGULATION (EEC) No 2294/80

of 28 August 1980

amending Regulation (EEC) No 191/80 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), and in particular Article 14 thereof,

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, by its Regulation (EEC) No 191/80 (2), the Council imposed a definitive anti-dumping duty on lithium hydroxide originating in the United States of America and the Soviet Union ;

Whereas Metallgesellschaft AG, the sole Community producer, asked for this definitive duty to be re-examined and set out evidence showing that such a re-examination was needed ;

Whereas the Commission accordingly undertook the above re-examination and published an opinion on the matter in the *Official Journal of the European Communities* (3) ;

Whereas, in the course of the re-examination of the matter, the interested parties had the opportunity to make known their views in writing, to be heard by the Commission and to develop their views orally, 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 adjust the definitive measures ; whereas the Community producer and some of the exporters concerned availed themselves of these possibilities by making known their views in writing and orally ;

Whereas, during the re-examination, it was established that the domestic price in the United States of America, on which the determination of normal value was based for both the American and Russian exports, had increased by 4·6 % since the date of the definitive determination of the dumping margin ; whereas, in consequence, it is necessary to adjust by this amount the normal value on which the definitive duty was based in order to take account of the increase in the United States domestic 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 5 % for Lithium Corporation of America, 4·4 % for Foote Mineral Company and 4·4 % 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 1 503 tonnes in 1979 ; whereas the imports concerned reached a market share of 66·8 % during the same period and are consequently having an even greater effect on the market than that established during the definitive examination ;

Whereas the prices of these imports into the Community are again exercising 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 or further arguments advanced which could have altered that determination ;

Whereas, therefore, the facts as re-examined 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 causing, or are threatening to cause, material injury to the Community industry concerned ;

Whereas, in these circumstances, protection of the Community's interests calls for the adjustment of the definitive measures introduced by Regulation (EEC) No 191/80 in respect of lithium hydroxide originating in the United States of America and the Soviet Union ;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 23, 30. 1. 1980, p. 19.
(3) OJ No C 181, 19. 7. 1980, p. 4.

Whereas one of the two American exporters, Foote Mineral Company, voluntarily undertook 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 definitive duty; whereas, in the course of the re-examination, this same company 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; whereas, consequently, this company remains excluded from the application of the duty,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (3) and (5) of Regulation (EEC) No 191/80 are hereby replaced by the following:

'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 $ 1·66 per lb.'

'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:

— 5 % of the normal value of US $ 1·66 per lb for imports originating in the United States of America,

— 4·4 % of the normal value of US $ 1·66 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 $ 1·66 per lb, no duty shall be applied, or;

(ii) is lower than the normal value of US $ 1·66 per lb by less than 5 %, for imports originating in the United States of America, or by less than 4·4 % for imports originating in the Soviet Union, the duty shall be equal to the amount by which the said price is lower than the normal value.'.

Article 2

This Regulation shall enter into force on the day following 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, 28 August 1980.

For the Council

The President

G. THORN