# COUNCIL REGULATION (EEC) No 2370/83

## of 19 August 1983

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

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), as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 12 thereof,

Having regard to the proposal from the Commission, submitted after consultation of the Advisory Committee as provided for under the above Regulation.

Whereas :

### A. Provisional action

1. The Commission, by Regulation (EEC) No 985/83 (3), imposed a provisional anti-dumping duty on imports of barium chloride originating in the People's Republic of China and in the German Democratic Republic.

### B. Subsequent procedures

2. Following the imposition of the provisional anti-dumping duty, Sachtleben GmbH (hereinafter called 'Sachtleben') the current exclusive importer of the product concerned originating in the People's Republic of China, the exporter and the main importers of the product concerned originating in the German Democratic Republic and the Community producer concerned requested, and were granted, an opportunity to be heard by the Commission. All these parties also made written submissions making known their views on the provisional duty.

3. Sachtleben also requested to be informed of certain facts and essential considerations on the basis of which it was intended to recommend definitive action and this request was granted.

4. In view of the drastic increase of the imports of the dumped product originating in the People's Republic of China during the first three months of 1983 (see 19th recital of Regulation (EEC) No 985/83) and their possible effects with regard to the injury suffered by the Community producer concerned, it was considered appropriate to change the investigation period from August 1981/July 1982 to the period January 1982 to March 1983. Therefore, all parties who had replied to the Commission's questionnaire after the opening of the proceedings were requested to update accordingly their replies. Furthermore, visits were made to the premises of the Community producer concerned, to a major importer-consumer of the product concerned and to Sachtleben's agent in Antwerp.

### C. Dumping margin

5. Since it was considered appropriate to take a more recent period of investigation, account has been taken of the updated information received concerning the export prices of the dumped products and the normal value.

6. The weighted average dumping margins determined on the basis of the revised information for the product concerned originating in the People's Republic of China and in the German Democratic Republic still exceeded 75 %.

7. Satisfactory evidence to justify an adjustment of the normal value for quality differences between the Chinese and the Community product claimed by Sachtleben has not been submitted and therefore the claim is rejected.

8. An adjustment of the normal value to take account of alleged cost advantages of the raw material and the alleged different production process in China claimed by Sachtleben cannot be made. Indeed, it remains 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 the normal value (USA). As prices are a function, not only of costs, but also of demand, a producer benefiting from a particular advantage has the choice either of keeping his sales prices low or of maintaining them at the level of his competitors' prices and keeping the extra profit resulting from such advantages. Even if normal value were to be based on the constructed value in the analogue

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 110, 27. 4. 1983, p. 11.

country (USA) any adjustments of costs established in a market economy country would involve relying on the labour, materials and energy and other costs and resource allocations in a non-market economy country, which Article 2 (5) of Regulation (EEC) No 3017/79 was specifically designed to exclude. Sachtleben's suggestion to base the normal value on the constructed value in the Community cannot be accepted, as it would be contrary to Article 2 (5) (b) of Regulation (EEC) No 3017/79, which provides for the constructed value of the like product in a market economy non-member country.

9. No account can be taken of the possible effects of the alleged price war between the ex-manufacturer in the Federal Republic of Germany and the Community producer concerned for the determination of the dumping, as the latter has been done on the basis of a comparison of the export prices of the exporters and the price of the like product sold on the domestic market of the analogue country (USA) and has no relation whatsoever with the historical prices of the product concerned in the Community.

## D. Injury

10. Due to the modification of the reference period, account has been taken of the available updated information concerning the injury suffered by the Community producer concerned. The Commission has, therefore, modified as follows the conclusions reached in Regulation (EEC) No 985/83.

11. With regard to the injury caused by crystallized barium chloride originating in the People's Republic of China, the statistical data show that imports into the Community increased from 3 088 tonnes in 1980 to 3 828 tonnes in 1981 to 5 849 tonnes in 1982 and to 3 451 tonnes during the first three months of 1983 This means an increase of 24 % between 1980 and 1981, 53 % in 1982 and a further increase of 136 % (extrapolated on a yearly basis) during the first three months of 1983. Sachtleben have contested the official Community import statistics and particularly the 1983 figures on the grounds that the bulk of their figures represent in fact only the putting into free circulation of goods, which had already entered the Community in 1982 under the transit (T1) regime and appeared already in the 1982 statistics. Therefore, the Commission checked the imports made by Sachtleben in 1981, 1982 and 1983. On the basis of the figures admitted by the importers known to the Commission the imports of crystallized barium chloride in the Community originating in the People's Republic of China increased by 42 % between 1980 and 1982. This increase must be seen in relation to a decrease by 38 % of the consumption of the product in this form in the Community between 1980 and 1982. The fact that a substantial part of these goods are held in stock by Sachtleben does not alter the conclusion that they constitute an element of injury, as they may effectively be put on the market at any moment. Furthermore, a substantial quantity of crystallized barium chloride is still held by Sachtleben in Antwerp under the T1 regime. These goods constitute, however, at least a threat of injury, as they may be cleared at the customs and put into free circulation in the Community at very short notice. With regard to future imports, Sachtleben is under a contractual obligation to buy for several years from the Chinese exporter a very substantial and increasing quantity of crystallized barium chloride.

12. With regard to the injury caused by anhydrous barium chloride originating in the People's Republic of China, a significant increase took place between 1980 and 1982. These imports stopped in 1982 due to technical problems. However, Sachtleben confirmed that these problems no longer exist so that these imports constitute a threat of injury. Furthermore, Sachtleben is in a position to transform the imported crystallized barium chloride into anhydrous barium chloride. In order to prevent Sachtleben importing anhydrous barium chloride directly from the People's Republic of China or transforming imported crystallized barium chloride into anhydrous barium chloride, the Community producer concerned decided to conclude with Sachtleben a pluri-annual contract for anhydrous barium chloride for which the sales prices are far below his production costs.

13. With regard to the injury caused by the dumped imports originating in the German Democratic Republic, the evidence available to the Commission shows that imports into the Community of crystallized barium chloride increased in the United Kingdom, which constituted the main import market of the product concerned originating in the German Democratic Republic, from zero tonnes in 1980 to 253 tonnes in 1981 and decreased slightly in 1982. Although there have been only very little imports in 1983 of the product concerned originating in the German Democratic Republic, they constitute a threat of injury, given the export capacity of the exporter in the German Democratic Republic and the like-

lihood that he will resume exporting to the Community, if an anti-dumping duty were to be imposed only on the imports originating in the People's Republic of China.

14. The weighted resale prices of the crystallized barium chloride originating in the People's Republic of China and the German Democratic Republic undercut the prices of the Community producer during the investigation period by 7 to 17 % and 13 % respectively. The resale prices of these imported products were lower than those required to cover the costs of the Community producer concerned.

15. With regard to the consequent impact on the Community producer concerned, the evidence available to the Commission shows that the production of crystallized barium chloride of the Community producer concerned available for the market dropped by 6 % between 1980 and 1981 and by 52 % between 1981 and 1982. Furthermore, the evidence available to the Commission shows that the capacity utilization of the Community producer concerned dropped accordingly.

16. The sales of crystallized barium chloride of the Community producer concerned to customers in the Community dropped by 33 % between 1980 and 1981 and remained fairly stable in 1982.

17. With regard to the share of the market of crystallized barium chloride held by the Community producer concerned, it has slightly increased from 30 to 33 % between 1980 and 1982, whereas the market share of the product concerned originating in the People's Republic of China has increased from 36 to 48 % during the same period and the market share of the product concerned originating in the German Democratic Republic has remained stable at 8 %.

18. The losses incurred by the Community producer concerned for crystallized barium chloride showed a further substantial increase between 1980 and 1982 as well as during the first three months of 1983.

19. The employment figures of the Community producer concerned have remained fairly stable since 1980. The risk that the exporter of the product concerned in the German Democratic Republic resumes exports of the dumped product if no anti-dumping duty is imposed on these imports on the one hand, and the continuation of imports of crystallized barium chloride from the People's Republic of China and the risk that anhydrous barium chloride be imported again from the People's Republic of China on the other hand, constitute, however, a serious threat of loss of employment and even of closure of the plant of the Community producer concerned.

20. In the Commission's view, therefore, the facts as finally determined show that the injury being caused by dumped imports of barium chloride originating in the People's Republic of China and in the German Democratic Republic, taken in isolation from that caused by other factors, has to be considered as material.

Furthermore, Sachtleben's argument that the effects of the alleged price war between the ex-manufacturer in the Federal Republic of Germany and the main Community producer needs to be taken into account has been duly considered. However, the results of the investigation have shown that this price war, if it really existed, has ceased in 1981, when the ex-manufacturer in the Federal Republic of Germany stopped producing the product concerned. In conclusion, the impact of the considerable dumping practised by the exporters in the People's Republic of China and in the German Democratic Republic on the Community market is such that, taken in isolation, it has to be qualified as constituting material injury.

## E. Community's interests

21. Sachtleben has argued that the introduction of protective measures on the product concerned would not be in the interest of different sectors of the Community industry. Furthermore, it is said that the relevant market has only a limited price elasticity and that the imposition of duties at the level of the provisional duties would lead to a further reduction of the demand for the product concerned. Neither Sachtleben, nor any other party, submitted any evidece on this matter.

22. In view of the particularly serious losses which the Community producer concerned faces in the production and sale of the product concerned and in order to avoid the closure of the plant of the Community producer concerned, which would make the Community, to a significant extent, dependent upon external supplies of this product, it is concluded that it is in the Community's interests that action be taken.

23. In these circumstances, protection of the Community's interests calls for the imposition of a definitive anti-dumping duty on imports of barium chloride originating in the People's Republic of China and in the German Democratic Republic.

### F. Definitive duty

24. Having regard to the extent of the injury caused, the rate of the duty should be less than the dumping margins as established but adequate to remove the injury caused.

25. Having compared the complainant's weighted average prices and costs with the individual importer's costs and special marketing conditions, where available, the Commission determined that the current injury would 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 323 ECU per tonne.

### G. Collection of provisional duty

26. Although there appears to have been no substantial imports of the product concerned originating in both the exporting countries concerned since the imposition of the provisional duty, it is appropriate that the provisional duty be collected, particularly in view of the drastic increase of the imports of the dumped product originating in the People's Republic of China since the opening of the anti-dumping proceedings. The amounts secured by way of provisional anti-dumping duties should be collected to a maximum of 319 ECU per tonne,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of 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 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 323 ECU.

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

3. The provisions in force with regard to customs duties shall apply to the said duty.

*Article 2*

The sums secured by way of provisional anti-dumping duty under Regulation (EEC) No 985/83 shall be definitively collected up to a maximum of 319 ECU per tonne.

*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, 19 August 1983.

*For the Council*

*The President*

C. SIMITIS