COUNCIL REGULATION (EEC) No 2978/83

of 24 October 1983

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], as amended by Regulation (EEC) No 1580/82 [2], and in particular Articles 12 and 14 thereof,

Having regard to the proposal submitted by the Commission after consultation of the Advisory Committee set up under the above Regulation,

Whereas,

A. Prior action

(1) By its Regulation (EEC) No 191/80 [3] the Council imposed a definitive anti-dumping duty on lithium hydroxide falling within Common Customs Tariff subheading 28.28 B, corresponding to NIMEXE code ex 28.28-10, originating in the United States of America and the Soviet Union.

(2) That Regulation was subsequently amended by Regulation (EEC) No 2294/80 [4] which changed the amount of duty to the amount by which the free-at-Community-frontier price of lithium hydroxide is less than US $ 1,66 per lb.

B. Review procedure

(3) The Commission has since received a complaint from the European Council of Chemical Industry Federations (CEFIC), acting on behalf of the sole Community producer of lithium hydroxide, requesting a review of the definitive anti-dumping duty and the price undertaking given by one of the American exporters.

(4) Since the said request provided sufficient evidence to justify opening a review procedure, the Commission announced by a notice published in the *Official Journal of the European Communities* [5], a review of the definitive anti-dumping duty on imports of lithium hydroxide originating in the United States of America and the Soviet Union and started an investigation.

(5) The Commission officially advised the exporters and importers known to be concerned as well as the representatives of the United States and the complainants thereof, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing. Both of the American exporters took this opportunity to make their views known in writing and were granted hearings.

(6) Most of the importers made their views known in writing and some importers were granted hearings.

(7) The Commission sought and verified all information it deemed to be necessary for the purposes of the review procedure; it carried out on-the-spot investigations at the premises of the following:

Community producer:

Chemetall GmbH, Frankfurt, Federal Republic of Germany;

Exporters:

Foote Mineral Company, Exton, Pennsylvania, USA,
Lithium Corporation of America, Gastonia, North Carolina, USA;

Importer:

Lithium Corporation of Europe Ltd, Bromborough, United Kingdom.

(8) The enquiry into dumping covered the year ended 31 March 1983.

C. Normal value

(9) Normal value for American exporters was determined on the basis of the domestic prices of those producers who exported to the Community.

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(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 23, 30. 1. 1980, p. 19.
(4) OJ No L 228, 30. 8. 1980, p. 59.
(5) OJ No C 98, 12. 4. 1983, p. 2.

(10) In order to establish whether the imports from the Soviet Union were dumped, the Commission had to take account of the fact that the Soviet Union does not have a market economy and the Commission therefore had to base its determination on the normal value in a market economy country ; in this connection the complainant had suggested the United States' domestic market, this being the only known non-member market economy country which produces the like product. No objection was made to this suggestion and the Commission is satisfied that there is sufficient internal competition in the United States to ensure that price levels are in a reasonable proportion to production costs ; it is, therefore, considered appropriate and not unreasonable to determine normal value for imports originating in the Soviet Union on the basis of domestic prices in the United States.

D. **Export price**

(11) Export prices for American exporters were determined on the basis of the prices actually paid or payable for the products sold for export to the Community. With regard to exports from the Soviet Union, no information was provided to the Commission by the exporters or importers concerning export prices and these were consequently determined on the basis of the data provided in the complaint which was considered to be the best information available.

E. **Comparison**

(12) In comparing normal value with export prices, the Commission took account, where appropriate, of differences affecting price comparability and, in particular, of differences in conditions and terms of sale. All comparisons were made at ex-works level.

F. **Margins**

(13) The above examination of the facts showed that the American exporter which had given an undertaking after the original investigation had respected the terms of its undertaking but that, in some cases, the increases in the prices on the United States domestic market had led to a resumption of dumping. For this exporter and for the other exporters concerned the weighted average margin of dumping, which is equal to the amount by which the normal value as established exceeds the price for export to the Community, was as follows :

— exports from the United States 15,5 %,

— exports from the Soviet Union 12,0 %.

G. **Injury**

(14) Statistical evidence available to the Commission shows that imports into the Community from the Soviet Union and the United States decreased from 1 139 tonnes in 1980 to 702 tonnes in 1982 and the market share obtained by these imports decreased from 54,9 to 45,8 % during the same period.

(15) The weighted average resale prices of the dumped imports in the Community were approximately 15 % lower than those required to cover the costs of the sole Community producer and provide a reasonable profit. The resultant impact on this producer has been the incurring of a considerable loss which puts into jeopardy the continuation of the production of this product.

(16) The Commission has considered whether injury has been caused by other factors. In this connection it has taken into account the imports of lithium hydroxide originating in the People's Republic of China, which are the subject of an anti-dumping proceeding which was initiated at the same time as the review procedure.

(17) Whilst dumped imports of this product from China have increased substantially between 1980 and 1982 and have been at prices which were even lower than those of American and Soviet origin, the market share of 25,5 %, held by Chinese exports in the Community is far less than the 45 % held by the other exporters concerned who must thus be considered to have a dominant position on the Community market. For this reason the Commission has been led to maintain its view that the continued application of the anti-dumping duty and the maintenance of price undertakings was a requirement for the elimination of injury and the prevention of its recurrence. The renewal of dumping and consequent injury show that if the definitive duty is not increased and the undertakings are not increased to a higher level, material injury to the Community industry concerned would result.

H. **Community interest**

(18) Community processing industries have argued that the continuation of protective measures would not be in the Community interest because it would adversely affect the competitive position on extra-Community markets. In view of the particularly serious difficulties facing the only Community producer, its strategic importance and the relatively low impact of a price increase

on the costs of the processing industry the Council has nevertheless come to the conclusion that it is in the Community's interest that definitive measures be continued in respect of lithium hydroxide originating in the Soviet Union and the United States.

I. Undertakings

(19) The American exporters concerned were informed of the main findings of the review and commented on them. Foote Mineral Company, which had offered an undertaking in the original proceeding, volunteered to renew it at a level considered necessary to prevent renewed injury to Community industry. The Lithium Corporation of America also voluntarily undertook to respect a minimum price for its exports. The effect of these undertakings will be to maintain the import prices at the level necessary to prevent injury. In no case do the prices in these undertakings exceed the dumping margins found. The Council has therefore determined that imports of lithium hydroxide exported by the Foote Mineral Company and the Lithium Corporation of America should be excluded from the duty.

J. Increase in rate of definitive duty

(20) In the light of the findings of the review, the definitive duty imposed by Regulation (EEC) No 191/80 and subsequently amended by Regulation (EEC) No 2294/80 should be adjusted so as to fix a new free-at-Community-frontier minimum price before duty of US $ 1,80 per lb in place of the former price of US $ 1,66 per lb,

HAS ADOPTED THIS REGULATION :

Article 1

Article 1 of Regulation (EEC) No 191/80 is hereby amended as follows :

(a) Paragraph 1 shall be replaced by the following :

'1. A definitive anti-dumping duty is hereby imposed on imports of lithium hydroxide falling within Common Customs Tariff subheading 28.28 B and corresponding to NIMEXE code ex 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 and the Lithium Corporation of America, USA.

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

(b) Paragraph 3 shall be 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 $ 1,80 per lb.' ;

(c) Paragraph 5 shall be replaced by the following :

'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 :

— 15,5 % of the normal value of US $ 1,80 per lb for imports originating in the United States of America,

— 12 % of the normal value of US $ 1,80 per lb for imports originating in the Soviet Union ;

(b) However :

(i) where the declaring party can provide satisfactory proof to the customs authorities that the price paid by the first purchaser exceeds or is equal to the normal value of US $ 1,80 per lb, no duty shall be applied ;

(ii) where the declaring party can provide satisfactory proof to the customs authorities that the price paid by the first purchaser is lower than the normal value of US $ 1,80 per lb by less than 15,8 % for imports originating in the United States of America, or by less than 12 % 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 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 Luxembourg, 24 October 1983.

For the Council

The President

G. ARSENIS