COMMISSION REGULATION (EEC) No 2402/89

of 31 July 1989

imposing a provisional anti-dumping duty on imports of barium chloride originating in the People's Republic of China or 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 2423/88 of 11 July 1986 on protection against or subsidized imports from countries not members of the European Economic Community (1), and in particular Article 11 thereof,

After consultation with the Advisory Committee as provided for in the above Regulation,

Whereas :

A. PROCEDURE

(1) In November 1988 the Commission received a complaint from the European Council of Chemical Manufacturers' Federations (ECCMF), on behalf of European producers representing almost all Community production of barium chloride. The complaint concerned imports of that product originating in the People's Republic of China and the German Democratic Republic.

(2) An earlier complaint concerning the same product was received in 1982 and resulted in the imposition of definitive anti-dumping measures (see Council Regulation (EEC) No 2370/83 (2)).

(3) Although this case does formally constitute a new complaint, the situation is essentially comparable to that covered by Article 15 of Regulation (EEC) No 2423/88. The measures imposed in 1983 remained in force until 21 August 1988, i.e. dumping almost eight months of the period of investigation, which ran from 1 January to 30 November 1988.

(4) The complaint received in 1988 contained evidence sufficient to justify the initiation of an investigation. The evidence concerned the persistence of dumping and the resulting injury, despite the measures imposed under Regulation (EEC) No 2370/83 mentioned above, and the existence of a real threat of injury once the measures expire. In a notice published in the *Official Journal of the European Communities* (3) the Commission accordingly announced the initiation of an anti-dumping proceeding concerning barium chloride in crystallized and/or anhydrous form, CN code 2827 38 00 (Nimexe 28.30-20).

(5) The Commission gave official notice of the initiation of the proceeding to the exporters and importers known to be concerned and to the complainant, and gave the parties directly concerned an opportunity to make known their views in writing.

(6) All the exporters and a large number of the known importers made their views known in writing.

(7) No comments were received either from consumers or processors, or from associations representing their interests.

(8) The Commission sought and verified all the information it deemed necessary for the purposes of a preliminary determination of dumping and injury resulting therefrom. It carried out inspections at the premises of all the Community producers behind the complaint.

(9) While the company with sole marketing rights to the production of the main European producer was involved in gathering the material contained in the complaint, it subsequently refused to cooperate in the Commission's investigation. The Commission therefore worked from the information at its disposal to calculate the missing elements, such as Community producers' selling prices and weighted average costs.

B. NORMAL VALUE

(10) Since the countries referred to in the complaint are not market economy countries, the Commission used the price at which a like product is sold in a third country to determine the normal value, in accordance with Article 3 (5) of Regulation (EEC) No 2423/88. The chosen country was the United States, which was also chosen in the first investigation in 1983. The choice is also in line with the complainants' suggestion.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 228, 20. 8. 1983, p. 28.
(3) OJ No C 308, 3. 12. 1988, p. 7.

(11) The arguments which favoured this choice five years ago are still langely valid. The manufacturing process for barium chloride, especially in its crystallized form, which represents the majority of the imports in question, is relatively simple. The labour content is confined to surveillance and handling tasks and is not decisive in fixing costs. A difference in the level of development between two producer countries therefore has little or no influence on the manufacture of the product.

(12) China contested the choice of the United States. However, its rejection was presented after the expiry of the time limit granted to the parties to make their views known. Moreover, China's arguments, based on the difference between its own development and that of the United States, are contradicted by the observations set out at 11 above. In any event, there is no direct link between the level of development and the production cost or price of a product in a particular country, especially when wages are not a decisive factor. A country which operates a systematic export policy can vary these elements depending on the export objective.

(13) For the purposes of applying provisional measures, the Commission decided to use the prices obtaining on the domestic American market, published in the *Chemical Marketing Reporter*, the main American magazine dealing with the marketing of chemical products. Those in the business consider these prices to be a true reflection of the actual state of the market.

C. EXPORT PRICE

(14) For the purposes of applying provisional measures, export prices for the German Democratic Republic were determined on the basis of prices actually paid or payable for the products sold for export to the Community.

Since the Chinese exporter failed to reply on this point, export prices for the People's Republic China were determined, for the purposes of applying provisional measures, on the basis of information published by Eurostat.

D. COMPARISON

(15) In comparing normal value with export prices, the Commission took account, when this seemed appropriate, of differences affecting price comparability, in particular differences in payment terms, delivery and distribution costs.

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

(17) The margin for crystallized barium chloride originating in the People's Republic of China was determined by comparing the monthly normal value corresponding to export prices as established by Eurostat per month and per Member State. There were no imports into the Community of anhydrous barium chloride originating in China during the period of investigation. The margin for both crystallized and anhydrous barium chloride originating in the German Democratic Republic was determined by comparing export prices with the normal value corresponding to the date of the export invoice.

E. DUMPING MARGINS

(18) The preliminary examination of the facts showed that both the People's Republic of China and the German Democratic Republic were dumping exports, the dumping margin being equal to the difference between the normal value established and the export price to the Community.

(19) The margin varied according to the exporting country and was calculated cif Community frontier. The weighted average for the period of investigation was :

— 46,11 % for crystallized barium chloride originating in the People's Republic of China,

— 18,49 % for crystallized barium chloride originating in the German Democratic Republic,

— 16,98 % for anhydrous barium chloride originating in the German Democratic Republic.

F. CURRENT SITUATION REGARDING INJURY

1. Imports of the product, market shares

(20) As regards injury caused by the dumped imports, the Commission's evidence shows that imports into the Community of barium chloride originating in the German Democratic Republic rose from 45 to 705 tonnes between 1983 and 1986, falling back to 451 tonnes in 1987 and 226 tonnes in 1988 (11 months). This represents an increase in that country's market share from 0,4 % to 2 % in five years, peaking at 5,1 % in 1986. It should be noted that figures are not available for imports from the German Democratic Republic into the Federal Republic of Germany, and that market shares are therefore underestimated.

(21) Imports originating in the People's Republic of China fell from 3 561 tonnes in 1983 to 579 tonnes in 1985, climbing back to 1 311 tonnes in 1986 and 1 365 tonnes in 1987. Imports in the first 11 months of 1988 totalled 888 tonnes. The corresponding market share fell from 31,2 % to 4,1 % (1985), recovering to 9,5 % (1986) and 8 % (1988).

(22) The market share taken by aggregate imports from the two countries in 1988 (11 months) was 10 %. The corresponding figure in 1983 was 31,6 %. It fell to around 7,3 % in 1985 and has been climbing since then.

(23) These figures show that the anti-dumping duty slowed down but did not eliminate the persistent upward trend of these countries' positions on the Community market. The duty had a significant impact until 1985 but has become less effective since then.

2. Undercutting

(24) In 1983 weighted average prices for imports originating in the People's Republic of China were 52 % lower than the prices charged by Community producers during the reference period in that year. The percentage of undercutting fell to 11 % in 1985, cimbing again to 42 % in 1987 and 20 % in 1988 (11 months). In certain Member States it rose as high as 40 % during the latter period.

(25) In 1983 weighted average prices for imports of crystallized barium chloride originating in the German Democratic Republic undercut those charged by Community producers by 31 %. The percentage of undercutting was 6 % in 1985, 4 % in 1986 and 6 % again in 1988 (11 months). Price undercutting on the anhydrous form was 5 % in 1988, with a gap of as much as 13 % in some months.

(26) It was also established that the selling prices of the products imported into the Community were below the level needed to cover the costs of Community were below the level needed to cover the costs of Community producers.

3. Consumption, production, sales, production capacity utilization in the Community

(27) Contrary to the claims of one of the exporters referred to in the complaint, Community consumption of these products has not fallen over thelast five years. In fact, it has risen significantly in certain years, moving from 11 399 tonnes in 1983 to 14 168 tonnes in 1985 and 14 709 tonnes in 1987, i.e. a growth of almost 30 %. Not until 1988 was there a certain slowing down, with consumption falling to the 1983 level: 11 115 tonnes for 11 months.

(28) During the same period, Community production available for sale also rose significantly, from 9 123 tonnes in 1983 to 14 658 tonnes in 1985, 15 029 tonnes in 1987 and 13 025 tonnes in 1988 (11 months).

(29) While the Community industry's sales have benefited from this upturn, (particularly sales of the crystallized product, which grew from 4 020 tonnes in 1983 to 9 049 tonnes in 1985), they fell again after 1985/86 and the figure for 1988 is below the equivalent figure for 1984: 6 289 tonnes against 6 961 tonnes. It is lower even than the 1983 figures for sales of the anhydrous product: 4 585 tonnes against 5 139 tonnes.

(30) The Community industry has made an effort to adapt its production capacity to an economy experiencing a downward swing in comparison with the 1970s; the main producer closed down a production chain in 1984, reducing Community capacity from 38 850 tonnes a year to 23 850 tonnes a year.

4. Stocks

(31) The stock situation has been causing concern since 1987. It has even reached a level comparable to that of 1983 for the crystallized product, which represents around 22 % of annual production.

5. Employment, profitability

(32) In October 1984, in order to keep its production unit active, the main Community producer signed an exclusive contract for commission work with a firm which at the time was a major importer of the product. In spite of this, the producer in question has shed around a sixth of its workforce since 1983. More seriously, after improved profitability in 1985, a year which saw sizeable profits in the prosduction of both anhydrous and crystallized barium chloride, the same producer has since suffered continued and increasing losses of up to 50 %.

(33) The Community industry as a whole has shed about 20 % of its workforce during the period in question.

6. Cumulative effect

(34) In assessing injury, the Commission thought it advisable to examine the cumulative impact of imports from the People's Republic of China and the German Democratic Republic. It based its examination on the similarity of the physical characteristics of the products of the products in question with those originating in the Community and on the way they compete with Community products on the Community market. As has already been shown, while Community consumption has been sustained, products originating in the two countries concerned are tending to replace products originating in the Community.

7. Cause and effect

(35) The decline in profits, sales and Community market shares has coincided with the increased penetration of products from the countries concerned.

(36) the trend of Community consumption does not explain the increased market share of China and the German Democratic Republic, as the figures for 1985 and 1986 show. The two countries doubled their share of the market during those two years, while Community consumption actually fell slightly.

(37) The increased presence of the People's Republic of China on the Community market coincides with the imposition by the United States of an anti-dumping duty on imports from China of the products in question.

(38) The Commission was unable to find any other factors explaining the fall in profitability. On the contrary, as was mentioned at 30 above, a considerable effort to improve management was made in the form of a reduction in production capacity.

8. Conclusion

(39) All in all, the information given above shows that the duty introduced in 1983 seems to have been effective until 1985/86. Since then, imports from the countries in question have again been injurious to the Community industry, though to a lesser extent.

G. POSSIBLE EFFECTS OF THE LAPSING OF THE ANTI-DUMPING MEASURES : THREAT OF INJURY

(40) In view of the fact that the situation is comparable to that covered by Article 15 of Regulation (EEC) No 2423/88, the Commission took account of the following in its examination of the possible effects of the lapsing of the measures :

(41) the production capacity of at least one of the countries in question — the People's Republic of China — is, according to the data it supplied, around 36 000 tonnes a year, which is far higher than the Community's production capacity. According to the same sources, China exports about 10 000 tonnes a year. If the Community, which has the largest or second largest chemical industry in the world, consumes only some 15 000 tonnes of barium chloride a year, it is unlikely that China, the fifth largest chemicals manufacturer in the world, absorbs 26 000 tonnes a year on its domestic market. It therefore has excess capacity of at least 10 000 tonnes which it might be tempted to dispose of abroad.

(42) There is comparatively little, if any, outlet for Chinese exports on the American market, where demand for barium chloride is traditionally high, since the United States authorities imposed anti-dumping measures in 1984. On the other hand, the Community market is now unprotected.

(43) In the rest of Europe — another market where consumption of these products is high — the Chinese policy of sustained penetration of non-Community markets not subject to anti-dumping measures, such as Norway or Sweden, bears witness to its wish for a firmer footing on the continent.

(44) In these circumstances there is a genuine risk that the disappearance of the anti-dumping duty will lead to a worsening of the existing injury.

H. COMMUNITY INTEREST

1. Threatend loss of the Community industry

(45) The main community producer is 'tied' to its distributing company. Until the signing of the contract with the producer, the distributing company was one of the main importers of the product in question. Thus the absence of anti-dumping measures might tempt it to shift the balance of its interests in favour of dumped imports. This would pose a threat to orders given to the main European producer under the commission work contract. That producer represents 50 % of Community production.

(46) The position of the Community's smallest producer, a small, family-type business, is similarly precarious. Its stocks of crystallized barium chloride reached alarming levels in 1988 and its product range is small — only four or five lines. One of these, relatively profitable but with a limited market, is a product derived from barium chloride The firm's activities depend to a large extent on this product.

(47) Taking these two producers together, almost 80 % of Community production would be under threat in the near future. The total or near-total loss of the Community industry would mean complete dependence on foreign sources of barium chloride.

(48) Such a situation would also have long-term disadvantages for Community consumers, since the Community and non-Community European market is aleady split up to some extent, by

product, between the German Democratic Republic and the People's Republic of China. The German Democratic Republic exports mainly anhydrous barium chloride, while China exports mainly the crystallized product. In these circumstances both countries would be highly tempted to profit from what is practically a monopoly situation.

2. **Threat to employment**

(49) While the number of jobs threatened does not look stressed high, it should be stresset that the factory of the main producer is located in a region which has already been hard hit by economic recession. Moreover, barium chloride represents 20 % of the turover of the production unit, which employs some 130 people in all. In the long term all these jobs are at risk, not just those of the 60 or so workers producing the products referred to in the complaint.

3. **Maintaining competition at Community level**

(50) The survival of three Community firms of different sizes and resources ensures continued competition on the market. Moreover, the fact that the main producer's selling price is fixed by another economic operator marketing the products ensures to some extent that there is no tendency towards a monopoly on the part of that producer, despite its predominant market share.

4. **Consumer interest**

(51) There was no opposition from consumer associations, individual consumers, groups or other interests to the imposition of new duties on the products in question. Moreover, since these are intermediate products used in small quantities in the production of other manufactured products, it may be assumed that the duty would have little impact on the purchaser of the final product.

5. **Conclusion**

(52) In conclusion, the Commission considers that an anti-dumping duty should be raidly reimposed on the products concerned entering the common market.

I. **PROVISIONAL ANTI-DUMPING DUTIES**

(53) Considering the level of injury caused and the dumping margins estabished, the Commission does not feel that the provisional duties to be imposed need to be equivalent to the dumping margins; lower duties would be sufficient to remove the injury ascribed to the products concerned.

(54) The Commission has taken account of both the price of the imports concerned and the minimum price which would enable Community producers to cover production costs during theinvestigation period, plus a reasonable profit margin, allowing also for the importer's profit margin and customs duties. Accordingly, the provisional anti-dumping duties are set at 25,43 % of the net free-at-Community-frontier price before duty for crystallized barium chloride originating in the People's Republic of China and 3,52 % for crystallized barium chloride originating in the German Democratic Republic, and 13,25 % of the net free-at-Community-frontier price before duty for anhydrous barium chloride originating in the German Democratic Republic.

(55) The Commission is not aware of any exports of anhydrous barium chloride from the People's Republic of China during the investigation period. Under the Community rules, provisional anti-dumping duties are not imposed when a preliminary examination shows that there is insufficient evidence of injury to Community industry caused by imports from the country concerned.

(56) A time limit should beset for the parties concerned to make known their views in writing and to request a hearing by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of barium chloride originating in the People's Republic of China and the German Democratic Republic, falling within CN code 2827 38 00.

2. The duty shall be equal to:

— 25,43 % of the net free-at-Community-frontier price before duty for crystallized barium chloride originating in the People's Republic of China,

— 3,52 % of the net free-at-Community-frontier price before duty for crystallized barium chloride originating in the German Democratic Republic,

— 13,25 % of the net free-at-Community-frontier price before duty for anhydrous barium chloride originating in the German Democratic Republic.

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 originating in the

People's Republic of China or the German Democratic Republic shall be subject to the provision of a security equivaent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and request a hearing from the Commission within one month from 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 2423/88, 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, 31 July 1989.

For the Commission
Frans ANDRIESSEN
Vice-President