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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

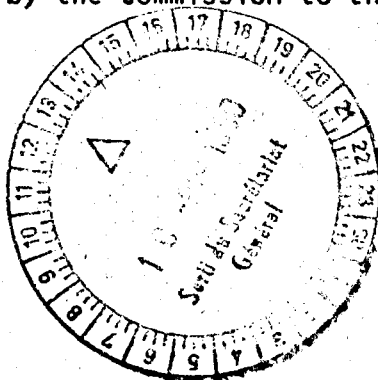
COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 779 final

Brussels, 31st December 1979

PROPOSAL FOR A COUNCIL REGULATION (EEC)
IMPOSING A DEFINITIVE ANTI-DUMPING DUTY ON
LITHIUM HYDROXIDE ORIGINATING IN THE
UNITED STATES OF AMERICA AND THE SOVIET UNION

(proposed by the Commission to the Council)



COM(79) 779 final

EXPLANATORY MEMORANDUM

The Commission, by Regulation (EEC) N° 2391/79 of 26 October 1979, imposed a provisional anti-dumping duty on lithium hydroxide originating in the United States of America and the Soviet Union. This Regulation applies until the entry into force of an Act of the Council adopting definitive measures or, at the latest, until the expiry of a period of three months beginning on 31 October 1979.

A month before the expiry of this time limit the Commission, pursuant to the anti-dumping Regulation (EEC) ⁽¹⁾, should submit to the Council a proposal relating to the adoption of definitive measures.

Since the imposition of the duty, the Commission's services have continued their examination of the facts in co-operation with the Member States. This examination has enabled the Commission to gather further information, supported by proof of the "normal value" of this product and of the American and Russian export prices.

The facts as finally established show that there is dumping and injury and that the amounts secured by way of provisional duty should be definitively collected. These facts also show that the normal value established for the purposes of the provisional duty has since increased and this increase must be taken into account when determining the definitive duty.

In these circumstances, the Commission submits the attached proposal for a Council Regulation imposing a definitive anti-dumping duty on lithium hydroxide originating in the United States of America and the Soviet Union and providing for the definitive collection of the amounts secured by way of provisional duty.

(1) To be inserted once new regulation is published (former Regulation (EEC) 459/68).

PROPOSAL FOR
COUNCIL REGULATION (EEC)

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) N° of (*)
on protection against dumped or subsidized imports from countries which are
not members of the European Economic Community⁽¹⁾,

Having regard to the proposal submitted by the Commission after consultation
within the Advisory Committee set up under Article 6 of Regulation (EEC)
N°^(*),

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⁽²⁾;

(*) NB New Council regulation not yet published.

(1) OJ N° L

(2) OJ N° C 126, 19.05.1979, p. 2

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 spot investigation of another importer proved impossible owing to his refusal to permit it;

Whereas, for the preliminary examination 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 over the period 1 January 1979 to 30 April 1979, account being taken, insofar 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, when determining the existence of dumping on imports from the Soviet Union, the Commission had to take account of the fact that the Soviet Union is a non-market economy country;

Whereas, for this reason, the Commission has based its preliminary dumping calculations on the prices at which the like product is sold for consumption on the domestic market of a market economy third country;

Whereas a comparison with prices at which the like product is sold for consumption on the domestic market of the United States of America adjusted to take into account differences in conditions and circumstances of sale appeared to be appropriate and not unreasonable since the United States is the only market economy non-member country producing and exporting this product in substantial quantities;

Whereas, with regard to injury to the industry concerned, the evidence during the preliminary examination available to the Commission showed that imports into the Community of lithium hydroxide originating in the United States of America and the Soviet Union had increased from 988 tonnes in 1976 to 1 237 tonnes in 1978 ;

whereas the imports into the Community of the product in question reached a market share of 58% in 1976 and 62% in 1978 and were consequently having a considerable effect;

Whereas the prices of these imports on the Community markets had 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 had 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 was envisaged, which would have involved a reduction in personnel;

considered to be
Whereas the dumped imports were manifestly the principal cause of the difficulties described above;

this
Whereas, since preliminary examination of the matter showed that there was dumping, that there was sufficient evidence of injury and that the interests of the Community called for immediate intervention, the Commission, by Regulation (EEC) No 2391/79⁽¹⁾, imposed a provisional anti-dumping duty on lithium hydroxide originating in the United States of America and the Soviet Union;

Whereas, in the course of the subsequent examination of the matter, completed after the imposition of the provisional anti-dumping duty, the Commission gave interested parties the opportunity to make known their views in writing, heard the interested parties^{who so requested} and gave the parties directly concerned^{who so requested} the opportunity orally to develop their views;

(1) OJ No L 274, 31.10.1979, p. 26

Whereas during the subsequent examination it was determined that the domestic price in the United States of America on which the determination of normal value is based has increased by 9.3% since the date of the preliminary determination of the dumping margin; whereas in consequence, for the definitive determination, it is necessary to adjust the normal value on which the provisional duty was based by this amount in order to take account of the increase in the domestic US price;

Whereas, with regard to all of the other elements affecting the dumping calculations, no new information was received nor further arguments advanced which would have altered the calculations; whereas consequently the current dumping margins are 9.6% for Lithium Corporation of America, 6.8% for Foote Mineral Company and 8.9% for Russian exports;

Whereas in the course of the subsequent examination of injury it was determined that imports into the Community of lithium hydroxide originating in the United States of America and the Soviet Union had reached a level of 632 tonnes during the first six months of 1979; whereas the imports concerned reached a market share of 65% during the same period and are consequently having an even greater effect on the market than that determined during the preliminary examination;

Whereas the prices of these imports into the Community continue to exercise a depressive effect on the Community producer's prices, obliging it to continue to sell at prices below its costs of production;

Whereas, with regard to all the other elements affecting the determination of injury, no new information was received nor further arguments advanced which could have altered that determination;

Whereas, therefore, the facts as finally established show that, due consideration having been given to the other factors having a bearing on the situation of this industry, as, for example, the decline of exports to countries outside the Community, the dumped imports are causing and threatening to cause material injury to the Community production concerned;

Whereas, in these circumstances, protection of the Community's interests calls for the definitive collection of the amounts secured by way of provisional duty in respect of lithium hydroxide originating in the United States of America and the Soviet Union and for the imposition of a definitive anti-dumping duty; 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, in order to avoid evasion of the anti-dumping duty, it is necessary to provide that where lithium hydroxide is not entered for consumption by the first purchaser in the Community there is an alternative procedure for the calculation of the duty;

Whereas one of the American exporters, Foote Mineral Company, voluntarily undertook, prior to the imposition of the provisional duty, 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 provisional duty; whereas this same company has meanwhile 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 and consequently this company remains excluded from the application of the duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 and exported by Foote Mineral Company, USA.

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

2. Without prejudice to paragraph 5 below 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 purchaser.

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-Community frontier basis, before duty, shall be US\$1.59 per lb.

4. The adjusted normal value as referred to in the preceding paragraph 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 by 1% for each month by which the period for payment is increased and reduced by 1% for each month by which that period is reduced.

5. a) Where the product defined in paragraph 1 above is not entered for consumption by the first purchaser in the Community, the definitive anti-dumping duty shall be at the following rates:

- 9.6% for imports originating in the United States of America,
- 8.9% for imports originating in the Soviet Union.

These rates shall be applied to the purchase price of the purchaser concerned, customs duties not included.

b) Where the declarant can provide satisfactory proof to the competent customs authorities that the normal value as defined in paragraph 3 above either is lower than the price to the first purchaser in the Community by less than 9.6% in the case of imports from the United States or 8.9% in the case of imports from the Soviet Union, or exceeds the price to the first purchaser in the Community by less than 9.6% in the case of imports from the United States or 8.9% in the case of imports from the Soviet Union, the amount of duty shall be limited to the difference calculated on this lesser amount.

Article 2

The amounts secured by way of provisional duty under Regulation (EEC) N° 2391/79 shall be definitively collected.

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,

For the Council
The President