Council Implementing Regulation (EU) No 616/2011 of 21 June 2011 terminating the expiry review and 'the new exporter' review of the anti-dumping measures concerning imports of certain magnesia bricks originating in the People's Republic of China

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terminating the expiry review and 'the new exporter' review of the anti-dumping measures concerning imports of certain magnesia bricks originating in the People's Republic of China

THE COUNCIL OF THE OPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 9 and Article 11(2), (4), (5) and (6) thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) In October 2005, pursuant to Regulation (EC) No 1659/2005[(2)], the Council imposed definitive anti-dumping duties ranging from 2,7 % to 39,9 % on imports of certain magnesia bricks originating in the People's Republic of China ('the PRC'). Following two interim reviews requested by Chinese exporting producers, the Regulation was amended in 2009 by Council Regulations (EC) No 825/2009[(3)] and (EC) No 826/2009[(4)]. Following the reviews, the anti-dumping duties imposed by Regulation (EC) No 1659/2005 currently range from 0 % to 39,9 %.

1.2. Request for an expiry review

(2) Following the publication of a notice of impending expiry[(5)] of the anti-dumping measures in force on imports of certain magnesia bricks originating in the PRC, the Commission received on 9 July 2010 a request for review pursuant to Article 11(2) of the basic Regulation. The request was lodged by the Magnesia Bricks Production Defence Coalition ('MBPDC') ('the applicant') on behalf of producers representing a major proportion, in this case more than 25 %, of the total Union production of certain magnesia bricks.

(3) The request contained prima facie evidence of the likelihood of continuation of dumping and recurrence of injury which was considered sufficient to justify the initiation of an expiry review proceeding. The applicant also claimed that an Austrian-

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based company, RHI AG ('RHI'), should be excluded from the definition of the Union industry on the grounds that it had shifted its core business activities to the PRC, where it has a related company producing the product concerned and increased its business activities relating to the product concerned in the PRC.

1.3. **Initiation of the expiry review**

(4) On 8 October 2010 the Commission, after consultation of the Advisory Committee, announced, by a notice published in the *Official Journal of the European Union* ('the notice of initiation')[6], the initiation of an expiry review proceeding concerning imports into the Union of certain magnesia bricks originating in the PRC.

1.4. **Investigation period of the expiry review**

(5) In view of the apparent large number of parties involved in the proceeding, the Commission announced in the notice of initiation that it may apply sampling in accordance with Article 17 of the basic Regulation. In order to enable it to decide whether sampling was necessary and, if so, to select a sample, exporting producers, importers and Union producers were required to provide certain information for the period 1 July 2009 to 30 June 2010 ('the investigation period' or 'IP').

2. PRODUCT CONCERNED AND LIKE PRODUCT

(6) The product concerned is chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, currently falling within CN codes ex 6815 91 00 and ex 6815 99 00.

(7) The like product is defined as chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, produced and sold in the Union market.

(8) Magnesia bricks are manufactured using magnesite minerals as the main raw material. They are normally produced to standard chemical specifications which are then altered to fit the demands of the end-user. Magnesia bricks are normally used in steel production as a lining for the vessels in which the steel is melted.

3. PARTIES CONCERNED BY THE INVESTIGATION

(9) The Commission officially advised the applicant, other known producers in the Union, the known exporting producers in the PRC, the representatives of the exporting country concerned and known importers and users of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(10) In view of the large number of parties involved sampling was envisaged in the notice of initiation for the Chinese exporting producers, unrelated Union importers and Union producers. Of the seventy-eight exporting producers contacted at initiation only

four provided the information for the selection of the sample requested in the notice of initiation.

(11) With regard to Union producers, a total of ten companies, including the producers on behalf of whom MBPDC requested the review, submitted the requested information. The Union producers requesting the review are heavily dependent on the supply of a major raw material from the PRC and have requested confidential treatment for their company names in view of possible retaliatory action.

(12) The Commission services had contacted all Union producers of magnesia bricks prior to initiation to obtain information on their production levels and to determine their support or opposition to the investigation. One of the companies that replied, RHI AG, expressed its opposition to the expiry review prior to initiation.

(13) Following initiation, RHI claimed that the facts presented by the applicant in the request for review, especially in regard to RHI's production volume, were not accurate and that, on the contrary, RHI should be included in the definition of the Union industry as had been done in the original proceeding in 2005. It consequently disputed the definition of the Union industry which had led to the initiation of the proceeding on the grounds that the requirements of Article 5(4) of the basic Regulation were not met, since it is the largest Union producer, accounting for more than 50 % of total Union production, and is opposed to the initiation.

4. INVESTIGATION

(14) As mentioned in recital 3 above, the applicant had considered that RHI AG should be excluded from the definition of the Union industry on the grounds that it had shifted its core business activities to the PRC. In view of this and the fact that RHI AG expressed opposition to the review, the Commission asked RHI to provide additional information in order to examine whether or not it should be included in the definition of the Union industry. The requested information concerned the company's business activities both in the EU and in the PRC and included data on its production capacity, production volumes, sales value and volumes in and outside the EU and the PRC and imports value and volume of the product concerned in the Union market. The company provided the additional information and an on-spot verification visit took place at the company's headquarters in Vienna.

(15) In the original investigation initiated in July 2004, RHI was one of the complainant Union producers. At that time RHI was also importing the product concerned from its related company in the PRC and it was examined whether the company should be excluded from the definition of the Union industry pursuant to Article 4(1)(a) of the basic Regulation.

(16) It is recalled that the assessment of RHI's situation was made in Commission Regulation (EC) No 552/2005 of 11 April 2005 imposing a provisional duty on imports of certain magnesia bricks originating in the People's Republic of China[7] and confirmed by Regulation (EC) No 1659/2005. For the purpose of the assessment, the following criteria were examined:

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— the location of the company's headquarters, research and development (R & D) centre and main production sites,

— the volume/value of the product concerned imported from the PRC compared to the total sales volume and value,

— the impact the imported sales had on the company's total Union sales, in particular by comparing the profitability of RHI's sales in the EU of the imported product concerned with the profitability rates of the cooperating Union producers.

(17) At that time it was found that the company's core business was situated in the Union as regards the product concerned (its headquarters, R & D centre and biggest production sites were all located in the Union). Moreover, the vast majority of RHI's sales on the Union market were produced in the Union and only a minor part was produced in the PRC (5 % of its total sales volume in the Union) as the production of the related company in the PRC was mainly aimed at the fast-growing Asian market. In addition, it was found that these imports were resold at prices comparable to those of the Union industry and therefore the company was not enjoying substantial beneficial effects, in terms of profitability, by reselling the imported product. Finally, it was explicitly mentioned that RHI's Union production company was a separate legal entity from its Chinese production company. It was found that, although RHI AG was a global group with a production site in the PRC constituting a separate legal entity, it still produced the vast majority of its magnesia bricks, which were subsequently sold on the Union market, at its Union production sites. On these grounds it was concluded that RHI AG, which supported the imposition of measures at that time, formed part of the Union industry.

(18) During the on-spot verification in the course of the current proceeding, it was found that the company's core business was still situated in the Union. The company's headquarters, shareholders and R & D centre were located in the Union. The company has five plants in the Union producing the product concerned and during the period 2005 to 30 June 2010, the end of the investigation period, the production capacity in these plants increased. The figures provided by RHI concerning its production capacity in the Union of the like product and the production volumes per plant in the investigation period were verified and found to be correct.

(19) The company also continued to invest in its EU plants and, for the period 2007 to the end of the investigation period, the investments relating to the like product represented a significant portion of the company's total investments in the EU.

(20) RHI has several related companies in the PRC involved in the production and trading of refractory products including magnesia bricks of which RHI Refractories Liaoning Co. Ltd, a separate legal entity, produces the product concerned. This company is a joint venture with a Chinese company and started production in 1997. It has only one plant. Although the plant's production capacity increased substantially during the period from 2005 to the end of the investigation period, it still does not represent a major proportion of the RHI's total production capacity (EU and Chinese plants combined).

(21) With regard to the imports volume of the product concerned, following the imposition of the measures in 2005, the company imported only one small shipment from its related company in the PRC in the investigation period, as it is subject to the highest anti-dumping duty rate of 39,9 %.

(22) RHI provided its sales value and volume for the like product produced in the Union and for the product concerned produced in the PRC. The company demonstrated that the majority of the sales of its related company in the PRC during the investigation period were for export to countries other than the EU, with the remainder being sold on the Chinese market.

(23) Concerning the impact the sales of the imported product concerned had on the company's total Union sales, the volume of these imports compared to the company's total sales volume in the Union market was insignificant and thus the impact on the company's sales negligible.

(24) Based on the data verified on-spot it is concluded that RHI should not be excluded from the definition of the Union industry. The company's situation has not changed substantially since the original investigation, when it was found that the three criteria were met and concluded that the company was part of the Union industry.

(25) The findings confirm that the company still has its core business activities (headquarters, R & D centre and main production sites) in the EU. The increase in the production capacity of the plant in the PRC in the period 2005 to the end of the investigation period cannot be considered as a shift of the company's core activities to the PRC. Therefore the applicant's argument that RHI should be excluded on the basis that it has a related company in the PRC producing the product concerned and increasing business activities in the PRC is rejected.

(26) The information supplied by the applicant did not accurately reflect the situation of RHI as a Union producer, in particular with regard to its production volume and production capacity in the Union, and its production capacity in the PRC. Thus, by including RHI's production volume in the total Union production figure the applicant's output constitutes less than 50 % of the total Union production. Furthermore, as explained above, (i) RHI should be considered as part of the Union industry within the meaning of Article 4 of the basic Regulation; (ii) RHI produces over 50 % of total Union production within the meaning of Article 5(4), second sentence, of the basic Regulation; and (iii) RHI is opposed to the expiry review. Therefore, the proceeding should be terminated.

5. TERMINATION OF THE PROCEEDING

(27) In the light of the above, it is considered that the present proceeding should be terminated in accordance with Article 9 and Article 11(2), (5) and (6) of the basic Regulation.

(28) The applicant was informed accordingly and was given the opportunity to comment. The applicant strongly contested the conclusions of the Commission and