Council Regulation (EC) No 716/2006 of 5 May 2006 imposing a definitive anti-dumping duty on imports of dead-burned (sintered) magnesia originating in the People's Republic of China

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (hereinafter referred to as the basic Regulation), and in particular Articles 9 and 11(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) In December 1993, definitive anti-dumping measures on imports of dead-burned (sintered) magnesia (DBM or the product concerned) originating in the People's Republic of China (PRC) were imposed by Council Regulation (EC) No 3386/93[(2)] (original investigation). These measures took the form of a minimum import price.

(2) Following an expiry review, these anti-dumping measures were maintained in February 2000 by Council Regulation (EC) No 360/2000[(3)].

(3) Following an interim review, the Council, by Regulation (EC) No 986/2003[(4)], amended the form of the anti-dumping measures in force by maintaining the minimum price but subject to specific conditions and imposing an *ad valorem* duty of 63,3 % in all other cases.

2. Request for a review

(4) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of DBM originating in the PRC[(5)], the Commission's services received a request in November 2004 to review these measures pursuant to Article 11(2) of the basic Regulation.

(5) The request was lodged by Eurométaux, acting on behalf of Community producers (hereinafter referred to as the applicant producers) representing a major proportion, in this case more than 50 %, of the total Community production of DBM.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 716/2006. (See end of Document for details)*

(6) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry. Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation[6] pursuant to Article 11(2) of the basic Regulation.

3. Investigation

(7) The Commission's services officially advised the applicant Community producers, the other Community producers, the exporting producers in the PRC (hereinafter Chinese exporters), the importers, traders, users and their associations known to be concerned, as well as the representatives of the government of the exporting country, of the initiation of the review.

(8) The Commission's services sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notice of initiation.

(9) The Commission's services also gave the parties directly concerned 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.

(10) In view of the apparent high number of exporting producers in the PRC and importers of the product concerned, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to be able to decide whether sampling would be necessary and, if so, to select a sample, the Commission's services sent out sampling forms asking specific information on average sales volume and prices of each exporting producer and importer concerned. No reply was received from any exporting producer, and only three replies were received from importers. It was therefore decided that sampling was not necessary.

(11) In addition, questionnaires were sent to producers in potential analogue countries, namely Brazil, Canada and Turkey, which were known to the Commission's services.

(12) All the applicant Community producers replied to the questionnaire. No Chinese exporting producer and no importer replied to the questionnaire. However, two importers made their views known in writing. One user submitted a partial reply to the questionnaire.

(13) The Commission's services sought and verified all information deemed necessary for the purpose of a determination of the likely continuation or recurrence of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) *applicant Community producers*:

— Grecian Magnesite SA, Athens, Greece,

— Magnesitas Navarras, SA, Pamplona, Spain,

— Slovenské magnezitové Závody as, Jelšava, Slovakia;

(b) *producer in the analogue country*:

— Kümaş Kütahya Manyezit Işletmeleri Pazarlama aş, Kütahya, Turkey.

4. Investigation period

(14) The investigation of continuation or recurrence of dumping covered the period from 1 January 2004 to 31 December 2004 (hereinafter referred to as IP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2000 up to the end of the IP (the period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(15) The product concerned is the same as that in the previous investigations which led to the imposition of measures currently in force, *i.e.* natural dead-burned magnesia originating in the PRC and falling within CN code 2519 90 30.

(16) DBM is processed from magnesite, that is naturally occurring magnesium carbonate. In order to produce DBM, magnesium carbonate has to be mined, crushed, sorted and then burned in a kiln at temperatures of 1 500 to 2 000 °C. The result is DBM with a MgO (magnesium oxide) content ranging from 80 to 98 %. The main impurities in DBM are SiO_2, Fe_2O_3, Al_2O_3, CaO and B_2O_3 (silicon oxide, iron oxide, aluminium oxide, calcium oxide and boron oxide respectively). DBM is mainly used in the refractory industry to make formed and unformed refractories. Although there are different types of the product concerned with *e.g.* various content of MgO, they all share the same basic chemical and physical characteristics and uses and are interchangeable. Therefore, as in the previous investigation, all grades of DBM should be considered to form one single product for the purpose of this investigation.

2. Like product

(17) As established in the previous investigations, this review investigation has confirmed that the products exported by the PRC and those manufactured and sold on the domestic market of the PRC, as well as those manufactured and sold by the Community producers on the Community market and by the producer in the analogue country on the domestic market of the analogue country have the same basic physical and chemical characteristics and end uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OF DUMPING

(18) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the measures would be likely to lead to a continuation of dumping.

1. Preliminary remarks

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(19) In the absence of cooperation either from any of the Chinese exporting producers or from any importer in the Community, this examination had to be based on information available to the Commission's services from other sources. In this respect and in accordance with the provisions of Article 18 of the basic Regulation, Eurostat data referring to the eight-digit CN code, checked with other sources, were used in order to establish import quantities and prices.

(20) Based on the Eurostat data, it was found that during the IP 369 079 tonnes of DBM were imported from the PRC into the Community, *i.e.* approximately 40 % of the Community consumption.

(21) During the IP of the previous expiry review, the import volume of Chinese DBM into the Community amounted to 260 967 tonnes, *i.e.* 54 % of Community consumption.

(22) It should be noted that, as the Community expanded to the 25 Member States, export volumes and export market shares of the previous and the current expiry reviews cannot be directly compared.

2. Dumping of imports during the investigation period

(23) In accordance with Article 11(9) of the basic Regulation, the Commission's services used the same methodology as in the previous investigation. It is recalled that in the previous investigation, a dumping margin in the order of 50 % was established.
Analogue country

(24) In calculating normal value, account was taken of the fact that for this investigation the normal value for imports from the PRC had to be based on data from a market economy third country in accordance with Article 2(7)(a) of the basic Regulation. In the notice of initiation Turkey was envisaged as an appropriate market economy third country. An unrelated importer submitted that Turkey was inappropriate on the grounds that the access to raw materials in Turkey was more difficult than in the PRC: magnesite mines in Turkey do not enjoy the same natural advantages as in the PRC so the extracting and processing costs were higher than in Chinese mines. Moreover, the same importer claimed that the Turkish domestic market was too small to be representative for the Chinese market. This importer suggested Brazil or Canada as more appropriate potential market economy third countries.

(25) The Commission's services examined whether Turkey, which was already used as market economy third country in the previous investigation, was still a reasonable choice. In particular, it was found that at least three Turkish companies produced and sold DBM in Turkey in significant quantities in competition with each other and with imports from other countries. The question of access to raw materials being easier in the PRC than in Turkey was addressed in the original investigation and no new evidence was submitted to change the conclusion that Turkey was an appropriate market economy third country. Insofar as such differences were shown to exist, these could be taken into account by making the necessary adjustments. One Turkish producer agreed to cooperate.

(26) The proposal of Brazil and Canada as potential analogue countries was also taken into account and anti-dumping questionnaires were sent to all known producers of DBM in these countries. However, no responses were received and thus no information was available to the Commission's services on sales prices and costs of production for DBM in Canada and Brazil. Therefore, no further consideration could be given to the use of Brazil and Canada as analogue countries.

(27) It was therefore concluded that Turkey was an appropriate analogue country for the purpose of establishing the normal value.

Normal value

(28) In accordance with Article 2(4) of the basic Regulation, it was considered whether sufficient domestic sales of the product concerned had been made by the producer in Turkey in the ordinary course of trade. As the volume of profitable transactions was higher than 80 %, and the weighted average price was above the cost of production plus selling, general and administrative costs, normal value was established on the basis of the weighted average prices actually paid for sales of the product concerned on the domestic Turkish market. In accordance with Article 18 of the basic Regulation, and in the absence of any cooperation from Chinese exporters, the weighted average sales price of the Turkish producer was used as there was no information as to the product types imported from the PRC into the Community and no information was available that suggested that the product mix of Chinese exports to the Community and Turkish domestic sales was substantially different.

Export price

(29) Given the lack of cooperation from the Chinese exporters, the export price had to be based on facts available in accordance with Article 18 of the basic Regulation. Eurostat figures were chosen as the appropriate basis for establishing the export price. The Eurostat average price levels were confirmed by reference to information obtained from the one cooperating user.

Comparison

(30) The weighted average normal value was compared to the weighted average export price of DBM, in accordance with Article 2(11) of the basic Regulation, both at ex-works level.

(31) For the purpose of ensuring a fair comparison between normal value and export price, account was taken for differences in factors affecting price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for inland and ocean freight, insurance, handling, loading and ancillary costs.

(32) In the previous investigation it was accepted that access to raw materials was easier in the PRC than in Turkey. As no information was submitted to indicate that this situation had changed, an allowance was granted in order to take into account the difference in extraction rates between the two countries. The same adjustment to the normal value was applied as in the previous investigation, *i.e.* a reduction of the normal