Council Regulation (EC) No 1659/2005 of 6 October 2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain magnesia bricks originating in the People's Republic of China

COUNCIL REGULATION (EC) No 1659/2005

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) On 13 April 2005, the Commission imposed, by Regulation (EC) No 552/2005[(2)] (the provisional Regulation), a provisional anti-dumping duty on imports into the Community of certain magnesia bricks originating in the People's Republic of China (PRC).

(2) It is recalled that the investigation period of dumping and injury (IP) covered the period from 1 April 2003 to 31 March 2004. The examination of trends relevant for the injury analysis covered the period from 1 January 2001 to the end of the IP (period considered).

2. Subsequent procedure

(3) Following the imposition of the provisional anti-dumping duty on imports of certain magnesia bricks from the PRC, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the parties were examined, and, where considered appropriate, the provisional findings

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1659/2005. (See end of Document for details)*

were modified accordingly. After the imposition of provisional measures, on-spot verification visits were carried out at the premises of

— Carboref GmbH, Germany (unrelated importer)

— Duferco, S.A., Switzerland (unrelated importer)

— Duferco La Louvière, Belgium (user)

— Refratechnik Steel GmbH, Germany (related importer).

(5) The Commission further disclosed all the essential facts and considerations on the basis of which it intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, taken into account for the definitive findings.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(6) It is recalled that, in recital 12 to the provisional Regulation, the product concerned was defined as chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC (the product concerned), normally declared within CN codes ex 6815 91 00, ex 6815 99 10. It was found in the further course of the investigation that CN code ex 6815 99 90 could also be legally used for imports of the product concerned.

(7) The investigation has shown that the product concerned was also imported under CN codes ex 6815 10 10, ex 6902 10 00 and ex 6903 90 90 (ex 6903 90 20 before 1 January 2004) during the IP. However, CN codes falling within chapter 69, ceramic products, should only be used for fired products and not for the product concerned which is unfired. In addition, CN code 6815 10 10 includes products which are essentially characterised by carbon, whereas the product concerned is essentially characterised by the magnesium oxide content. Therefore, imports of the product concerned under these codes should be considered unacceptable should they be used. In order to prevent misclassifications in the future, and to ensure that the codes will be correctly used, the customs authorities have been alerted via a special risk information form.

(8) One interested party argued that only the CN codes 6815 91 00 and 6815 99 10 were mentioned in the notice of initiation and that the investigation could, therefore, not be extended to the additional codes. However, CN codes which are mentioned in the notice of initiation are given for information only and are not binding, as it is the product description, in particular the physical and chemical characteristics, which is relevant for the scope of the investigation. Consequently, all types of magnesia bricks sharing the same basic physical and chemical characteristics and having basically the same use, should be covered by the investigation, regardless of their customs classification. The scope of the investigation has thus not been extended. The investigation has clarified that the product concerned should legally be imported under CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90. If, however, it was found that the product concerned

was mistakenly declared under a different CN code, the investigation also covered that product.

(9) In the absence of any other comments regarding the definition of the product concerned and the like product, it is therefore concluded that the product concerned is defined as chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC, declared within CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90. Findings in recitals 13 to 16 to the provisional Regulation are also confirmed.

C. DUMPING

1. General methodology

(10) The general methodology used to establish whether the imports into the Community of the product concerned were dumped was described in the provisional Regulation. The general methodology as set out in particular in recitals 35, 45 and 61 to the provisional Regulation is hereby confirmed.

2. Market Economy Treatment (MET)

(11) As mentioned in recital 28 to the provisional Regulation, one exporting producer failed to provide conclusive proof that its assets were valued independently and recorded at market value. It did not demonstrate that all costs were taken into account at market value. The exporting producer reiterated the same claims after adoption of the provisional Regulation. Although it failed to respect the extended deadlines, it claimed that it had provided new evidence concerning the assets valuation, justifying a reconsideration of the rejection of MET.

(12) It should be noted that the said exporting producer did not provide the documents requested within the deadlines, which would be sufficient to reject its claims. Nevertheless, an examination of the documents received indicated that no new evidence was provided to support these claims. Thus, even if these documents could be taken into consideration, they would not change the findings of the provisional Regulation. The decision not to grant MET to this exporting producer is therefore confirmed.

(13) Similarly, two other exporting producers to whom MET had been refused reiterated their objections raised at the provisional stage. However, no new evidence was provided which would justify any change in the decision.

(14) In the absence of other comments, the findings concerning MET set out in recitals 17 to 28 to the provisional Regulation are confirmed.

3. Individual treatment (IT)

(15) The companies not granted IT provided no new evidence proving that they should be granted IT. Therefore, and in the absence of any other comments on IT, the findings as set out in recitals 29 to 34 to the provisional Regulation are hereby confirmed.

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4. Normal value

4.1. Determination of normal value of all exporting producers not granted MET

(a) Analogue country

(16) As set out in recital 39 to the provisional Regulation, the Commission sought cooperation from 38 known producers around the world. However, cooperation was only obtained from two producers in the United States of America. The investigation did not show any reason why the information received and verified was not suitable for this proceeding.

(17) Some interested parties argued that the USA was not an adequate analogue country for establishing the normal value for the PRC. They claimed that with only three producers on the US domestic market the competition was insufficient. In this respect, it is recalled that, as set out in recital 40 of the provisional Regulation, the investigation showed that the USA have a competitive market for the product concerned with at least three producers, around 30 suppliers, more than 15 importers and approximately 300 users. This claim was therefore rejected.

(18) Since these claims were not further substantiated and in the absence of any further comments on this issue, the choice of the USA as the analogue country is hereby confirmed.

(b) Determination of normal value

(19) Some exporting producers claimed that clerical errors were made in the definitive dumping calculations. Other specific claims concerning the ocean freight costs, the insurance cost, export surcharge and the credit rate used in the calculations were also made by exporters.

(20) Following an examination of these claims, it was found that some clerical errors occurred in the calculations. These were corrected. Some other claims concerning ocean freight, the insurance costs and the export charge could also be accepted as far as they were justified and substantiated. All other claims had however to be rejected.

(21) For the reasons stated below, some interested parties argued that the normal value from the USA should be adjusted downward.

(22) Firstly, it was claimed that the Chinese producers have a different cost structure, especially with regard to certain costs including labour and electricity. It must be noted that this claim is irrelevant in the context of the assessment of normal value in the analogue country as any such adjustment on the costs would render the investigation in the analogue country meaningless and it would lead to adjust the normal value to non-market economy levels. Moreover, this claim was not substantiated by any evidence. Therefore, it had to be rejected.

(23) Secondly, it was argued that one of the two cooperating producers in the USA is linked to one of the complainant companies in the Community. It is recalled

that normal value in the analogue country was established on the basis of the data provided by two companies in the USA. This data was closely analysed and verified on spot. On this basis, it was concluded that the relationship between one of those companies and a complainant company did not affect the reliability of the data used for the establishment of normal value. No indications were found during the investigation that this relationship had any influence on the normal value in analogue country.

(24) Finally, following substantiated claims by a number of exporters, normal value was adjusted downwards due to (i) differences in quality of the raw material used by the producers in the analogue country as compared to that used by producers in the PRC; (ii) the higher costs of transport and other charges; and (iii) importation costs associated with the purchases of these raw materials by the US producers. It was also found that certain types of treatment of the bricks were done in the USA but not in China. Furthermore, the investigation showed that an adjustment concerning the level of trade was also warranted.

(25) In the absence of any other comments, recitals 42 and 43 of the provisional Regulation are confirmed.

4.2. Determination of normal value of all exporting producers granted MET

(26) At the provisional stage, the normal value for companies granted MET was established for each type of magnesia bricks. These types could be identified by a Product Control Number (PCN). For companies granted IT, however, groups of PCNs were established based on MgO content for the purpose of establishing the normal value.

(27) At the definitive stage, it was considered that the methodology should be streamlined so as to ensure consistency between exporting producers granted MET and other producing exporters. Accordingly, the groups of PCNs on MgO basis were also applied to calculate the normal value for producers granted MET.

5. Export price

(28) One exporting producer claimed that errors were made in the level of SG & A and profit of a related importer.

(29) After verification, it was found that the claim with regard to the SG & A could be accepted as a clerical error occurred at the provisional stage. However, the claim related to the level of the profit was not founded as the level used in the calculations was based on that of unrelated importers and traders verified during the investigation. The claim on the profit was therefore rejected.

(30) Another exporting producer claimed that the profit margins deducted for its related companies were excessive and provided evidence that the actual profit was at a lower level. It was also claimed that the profit should be deducted once for the last related trader only and not for intermediate related traders. In addition, it claimed that the calculation of the deduction of the export VAT should be based on the cost of raw materials and not on the export price of the goods.