Council Regulation (EC) No 778/2005 of 23 May 2005 imposing a definitive anti-dumping duty on imports of magnesium oxide 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 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 11(2) thereof,

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

Whereas:

A. MEASURES IN FORCE

(1) Following an expiry review, the Council imposed by Regulation (EC) No 1334/1999[(2)] definitive anti-dumping measures on imports of magnesium oxide (product concerned) originating in the People's Republic of China (the PRC). These measures took the form of a minimum import price. Following an interim review, by Regulation (EC) No 985/2003[(3)], the Council 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 27,1 % in all other cases.

(2) It should be noted that the original measures were imposed by Council Regulation (EC) No 1473/93[(4)] (original investigation).

B. PRESENT INVESTIGATION

(3) Following the publication of a notice of the impending expiry of the anti-dumping measures in force on imports of magnesium oxide originating in the PRC[(5)], the Commission's services received a request for an expiry review pursuant to Article 11(2) of the basic Regulation. The request was lodged on 9 March 2004 by Eurométaux (the applicant) on behalf of producers representing a major proportion, in this case, 96 % of the total Community production of magnesium oxide. The request alleged that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission's services announced

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 778/2005. (See end of Document for details)*

the initiation of an expiry review[6], pursuant to Article 11(2) of the basic Regulation and commenced an investigation.

(5) The Commission's services officially advised the applicant Community producers, the other Community producer supporting the complaint, the exporting producers in the PRC, importers/traders, user industries known to be concerned, as well as the representatives of the Chinese Government of the initiation of the review. 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.

(6) The Commission's services sent questionnaires to all parties known to be concerned and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(7) 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 questionnaires asking specific information on average sales volume and prices of each exporting producer and importer concerned. No reply was received from any exporting producer or importer. Therefore, it was decided that sampling was not necessary.

(8) In addition, questionnaires were sent to all the producers in the United States of America (USA), Australia and India (potential analogue countries), which were known to the Commission's services.

(9) Replies to the questionnaire were received from the four applicant Community producers and one producer in the analogue country, namely the USA.

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

Community producers

— Grecian Magnesite S.A., Athens, Greece

— Magnesitas Navarras, S.A., Pamplona, Spain

— Magnesitas de Rubian, S.A., Sarria (Lugo), Spain

— Styromag GmbH, St Katharein an der Laming, Austria

Producer in the analogue country

— Premier Chemicals, LLC, King of Prussia, Pennsylvania, USA

(11) The investigation regarding the likelihood of a continuation or recurrence of dumping and injury covered the period from 1 April 2003 to 31 March 2004 (the 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).

C. PRODUCT CONCERNED AND LIKE PRODUCT

(12) The product concerned is the same as that in the previous investigations which led to the imposition of measures currently in force, i.e. magnesium oxide, namely natural caustic calcined magnesite, falling within CN code ex 2519 90 90 (Taric code 2519 90 90 *10).

(13) Magnesium oxide is processed from naturally occurring magnesium carbonate or magnesite. In order to produce magnesium oxide, magnesite has to be mined, crushed, sorted and then burned in a kiln at temperatures of 700 to 1 000 °C. The result is magnesium oxide with various magnesium oxide contents or grades. The main impurities in magnesium oxide 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). Magnesium oxide is mainly used in agriculture for animal feeding or as a fertiliser and for industrial applications in the construction industry for flooring and insulating boards as well as in the pulp, paper, chemicals, pharmaceuticals, flame retardants, abrasives producing industries and environmental protection.

(14) As established in the previous investigations, this review investigation has confirmed that the products exported by the PRC and 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.

D. LIKELIHOOD OF A CONTINUATION OF DUMPING

(15) 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. Preliminary remarks

(16) 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 with 8-digit CN code and 10-digit Taric code, checked with other sources, were used.

(17) It is noted that the relevant Eurostat data with 8-digit CN code includes other products than the product concerned, while the data for the period considered with 10-digit Taric code did not include the 10 acceding countries.

(18) Therefore, Eurostat data with 10-digit Taric code was used for the 15 Member States which composed the European Union before enlargement, while Eurostat data with 8-digit CN code was used for the 10 new Member States. In addition, Eurostat data with 8-digit CN code used for the ten new Member Sates was adjusted by deducting the percentage difference existing between the data with 8-digit CN code and 10-digit Taric

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code reported by the 10 new Member States in the six month period after enlargement in order to exclude products other than the product concerned.

(19) Based on the adjusted Taric data, it was found that during the IP 115 225 tonnes of magnesium oxide were imported from the PRC into the Community, i.e. approximately 29 % of the Community consumption.

(20) During the IP of the previous expiry review, the import volume of Chinese magnesium oxide into the Community amounted to 110 592 tonnes, i.e. approximately 31 % of Community consumption.

(21) 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 compared.

Dumping during the IP

(22) In accordance with Article 11(9) of the basic Regulation, the Commission's services used the same methodology as in the original investigation. It is recalled that in the original investigation, a dumping margin of 27,1 % was established.

Analogue country

(23) Since the PRC is an economy in transition, normal value had to be based on information obtained in an appropriate third-country market economy in accordance with Article 2(7) of the basic Regulation.

(24) Since in the previous expiry review India was selected as an analogue country for the purposes of establishing normal value, a request for cooperation was sent to Indian producers. Furthermore, a request for cooperation was also addressed to all known producers in Australia and the USA, which had been suggested as possible analogue countries in the request for the expiry review.

(25) One Indian producer agreed to cooperate, but did not reply to the questionnaire. One Australian producer replied but declared itself not to be in the position to assist the Commission's services with the requested information. Only one USA producer agreed to provide the information requested.

(26) With respect to the USA, it was found that competition is sufficiently strong in the US market. Indeed, there are no anti-dumping duties imposed on imports of magnesium oxide, considerable volumes of the product concerned are imported from different third countries and there are two competing local producers. The production process of the cooperating USA producer is similar to that of the Chinese producers. The domestic sales of the USA producer represent a significant amount (around 83 %) of the total Community imports from the PRC during the IP.

(27) It is therefore concluded that the USA constituted an appropriate analogue country for the purpose of establishing normal value.

Normal value

(28) In accordance with Article 2(4) of the basic Regulation, it was considered whether domestic sales of the producer in the USA could, in view of the prices charged, be seen to be made in the ordinary course of trade. For this purpose, the full cost of production per unit during the IP was compared to the average unit price of the sales transactions made during the same period. It was found that all sales were made at a profit. The investigation also revealed that all sales of the cooperating producer in the USA were made to independent customers. As a result, the prices paid or payable by independent customers on the USA domestic market in the ordinary course of trade were used to determine the normal value in accordance with Article 2(1) of the basic Regulation.

Export price

(29) As already mentioned, in the absence of any other more reliable information, the export price was based on the Eurostat data. It was found that data on prices in Eurostat are recorded on a CIF European Community frontier basis. These prices were brought to a FOB basis by deducting ocean freight and insurance cost. The necessary information on these costs has been submitted by the Community industry and used in the calculations, in the absence of any other more reliable information.

Comparison

(30) For the purposes of ensuring a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. In this regard, adjustments were made in respect of ocean and inland freight.

Dumping margin

(31) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices, as determined above. This comparison showed the existence of dumping. The dumping margin, expressed as a percentage of the CIF Community frontier price, duty unpaid, was 100,73 %, which is well above the level found in the previous investigation (41,9 %).

Likelihood of continuation of dumping

(32) Further to the analysis of the existence of dumping during the IP, the likelihood of the continuation of dumping was also examined. In the absence of cooperation from exporting producers and given that little public information is available about the Chinese magnesium oxide industry, the conclusions below rely mainly on facts available, namely the market research information based on Japan Trade Statistics, the US bureau of the Census and China customs data submitted by the complainant.

Chinese production capacity

(33) According to the expiry review request, Chinese producers have substantial spare production capacity as they have the largest magnesite ore resource in the world, estimated at 1 300 000 tonnes. The total Chinese production capacity for the product concerned is estimated at between 800 000 and 1 000 000 tonnes per year, whereas