Commission Regulation (EC) No 552/2005 of 11 April 2005 imposing a provisional anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Communities[(1)] (the basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 13 July 2004 the Commission announced by a notice published in the *Official Journal of the European Union*[(2)] the initiation of an anti-dumping proceeding with regard to imports into the Community of certain magnesia bricks originating in the People's Republic of China (PRC).

(2) The proceeding was initiated as a result of a complaint lodged 7 June 2004 by the European Refractories Producers Federation (P.R.E.) (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain magnesia bricks. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant, other Community producers, the exporting producers, importers, suppliers and users as well as user associations known to be concerned, and representatives of the PRC of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) The complainant producers, other cooperating Community producers, exporting producers, importers, suppliers, users and user associations made their views

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known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent market economy treatment and individual treatment claim forms to the Chinese companies known to be concerned. Eight companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment should the investigation establish that they did not meet the conditions for MET and one company requested only IT.

(6) In the notice of initiation, the Commission indicated that sampling may be applied in this investigation. However, given the lower than expected number of exporting producers in the PRC which indicated their willingness to cooperate, it was decided that sampling was not required.

(7) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the two Community producers included in the complaint, three other Community producers, nine exporting producers in the PRC, one trader related to one Chinese exporter and located in South Korea, one trader related to one Chinese exporter and located in the Isle of Man, two importers related to one Chinese exporter and located in the Community, five suppliers of raw materials, three unrelated importers and 16 unrelated users (steel producers) in the Community.

(8) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producers:*

— RHI AG, Austria (RHI)

— LWB Refractories GmbH, Germany (LWB)

— Refratechnik Holding GmbH, (responses from Refratechnik Cement GmbH and Refratechnik Steel GmbH, Germany (Refratechnik).

No on-spot verifications have been carried out with regard to Refractarios Burcena S.L., Spain and Ceramica Del Nalon SA, Spain as each of these two companies accounted only for a very small percentage of Community production.

(b) *Exporting producers in the PRC:*

— RHI Refractories Liaoning Co. Ltd

— Yingkou Kyushu Refractories Co. Ltd

— Yingkou Guangyang Refractories Co. Ltd

— Yingkou Sanhua Refractory Materials Co. Ltd

— Dashiqiao City Magnesite Refractory Factory Co. Ltd

— Dashiqiao Sanqiang Refractory Materials Co. Ltd

— Liaoning Mayerton Refractories Co. Ltd
— Yingkou Qinghua Refractories Co. Ltd
— Yingkou Orind Refractories Ltd.

(c) *Related traders:*
— WonJin KR Co., Ltd, Yangsan-si, South Korea
— Mayerton Refractories Ltd, Isle of Man.

(d) *Related importers:*
— Refratechnik Steel GmbH, Düsseldorf, Germany
— RHI AG Ltd, Vienna, Austria.

(e) *Community users:*
— Corus Group plc, London, United Kingdom
— Hüttenwerke Krupp Mannesmann GmbH, Duisburg, Germany.

(9) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following companies:

Producers in the United States of America (USA):
— LWB Refractories Company
— Resco Products Inc.

3. Investigation period (IP)

(10) The investigation of dumping and injury covered the period from 1 April 2003 to 31 March 2004 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2001 to the end of the investigation period (period considered).

4. Product concerned and like product

4.1. General

(11) Magnesia bricks are normally used in steel production as a lining of the vessels in which the steel is melted. The product is normally produced to standard chemical specifications which are then altered to fit the demands of the end user. Accordingly, the number of individual product types is vast. Therefore, it has been decided to classify the product according to certain groupings for comparison purposes.

4.2. Product concerned

(12) The product concerned is 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 and ex 6815 99 10. However, the investigation has shown that the product

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concerned was also imported under CN codes ex 6815 10 10, ex 6815 99 90, ex 6902 10 00, ex 6903 90 20 and ex 6903 90 90 (ex 6903 90 20 before 1 January 2004).

4.3. Like product

(13) The investigation has shown that all types of the product concerned as defined in the preceding recital, despite differences in a variety of factors such as, *inter alia*, the ratio between the different raw materials, additives and post treatments, shapes and sizes are used for the same purposes.

(14) No differences were found between the product concerned and the magnesia bricks produced and sold on the domestic market in the PRC and the USA, which served as an analogue country for the purpose of establishing the normal value with respect to imports from the PRC. Indeed, these magnesia bricks have the same basic physical and chemical characteristics and uses compared with those exported from the PRC to the Community.

(15) Likewise, no differences were found between the product concerned and the magnesia bricks produced by the complainant and sold on the Community market. They both share the same physical and chemical characteristics and uses.

(16) It is therefore concluded that all types of magnesia bricks form one product and are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. DUMPING

1. Market Economy Treatment (MET)

(17) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c). Briefly, and for ease of reference only, these criteria are set out in summarised form below:

— business decisions and costs are made in response to market conditions,

— accounting records are independently audited and applied for all purposes,

— there are no significant distortions carried over from former non-market economy system,

— legal certainty and stability is provided by bankruptcy and property laws,

— currency exchanges are carried out at the market rate.

(18) Eight exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers.

(19) For the eight exporting producers and their related companies involved in the production and/or commercialisation of the product concerned located in the PRC, the Commission sought and verified at the premises of these companies all information submitted in the MET applications as deemed necessary.

(20) The investigation revealed that two out of the eight Chinese exporting producers fulfilled all of the conditions for granting MET. The two exporting producers in the PRC which obtained MET are:

— Yingkou Sanhua Refractory Materials Co. Ltd

— Liaoning Mayerton Refractories Co. Ltd.

(21) The remaining six claims had to be rejected. The following table summarises the determination for the six companies for which MET was not granted against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

Company	**Criteria**				
	Criterion 1Article 2(7)(c) indent 1	**Criterion 2Article 2(7)(c) indent 2**	**Criterion 3Article 2(7)(c) indent 3**	**Criterion 4Article 2(7)(c) indent 4**	**Criterion 5Article 2(7)(c) indent 5**
1	Met	Met	Not met	Met	Met
2	No decision	Not met	Met	Met	Met
3	No decision	Not met	Met	Met	Met
4	Not met	Not met	Not met	Met	Met
5	Not met	Not met	Met	Met	Met
6	Not met	Not met	Not met	Met	Met

Source: Verified questionnaire replies of cooperating Chinese exporters.

(22) The companies concerned and the complainant were given an opportunity to comment on the above findings.

(23) All six exporting producers submitted that the determination was wrong and that MET should be granted to them for the reasons set out below:

(24) Concerning criterion 1, one company argued that although a risk of State interference exists, it does not take place in practice. Other companies referred to Article VI of the GATT 1994 and doubted whether the Commission's decision was in line with WTO law. They claimed that since it had been shown in this investigation that there was no State Monopoly on the manufacture and sale of the product and that there is no evidence that the Chinese Government has fixed all domestic sales prices for magnesium bricks, the companies had discharged their burden of proof that free competition and accordingly market economy conditions prevail with regard to the manufacture and sale of the product.

(25) As acknowledged by the Court of First Instance, the burden of proof is on the exporting producer to demonstrate that it fulfils MET criteria. More importantly, during the investigation it was found that the company is established under the special Township law which provides possibilities for state interference and no exceptions to