

**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**

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<sup>(1)</sup> (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*<sup>(2)</sup> 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 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.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>(2)</sup> OJ C 180, 13.7.2004, p. 2.

- (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 Refractorios 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) Magnesite 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 magnesite bricks, whose magnesite 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 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 magnesite 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 magnesite 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 magnesite 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 1 Article 2(7)(c) indent 1	Criterion 2 Article 2(7)(c) indent 2	Criterion 3 Article 2(7)(c) indent 3	Criterion 4 Article 2(7)(c) indent 4	Criterion 5 Article 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 the application of this law were found to exist. Any re-negotiation of the Articles of Association would still leave untouched the status of the company. It was found that the local authority is involved in major decisions. Moreover, no independent evaluation was made as to whether the investments in the company reflect fair market prices, neither when the company was established nor when additional capital was inserted later into the company. The company has, in addition, according to the Business Licence, the possibility to make compensatory trade and barter trade and could not prove that this had not taken place. Based on the above, the Commission concluded that the company did not meet criterion 1. On this basis, and in line with the basic Regulation, which also reflects the Community's international obligations arising from the WTO, the arguments therefore have to be rejected.
- (26) Concerning criterion 2, some companies claimed that the alleged deficiencies in their accounting practices were irrelevant for the question of whether market economy conditions prevail with regard to the manufacture, and sale of the product. Moreover, these companies argued that, imposing such additional requirements as an obligation to use international standards, is unrelated to the issue of whether market economy conditions prevail. They claimed that it is a violation of the Community's obligations under GATT/WTO, in particular a violation of the explanatory note of GATT Article VI as well as Paragraph 15 (a)(ii) of the Decision of 10 November 2001, i.e. the Protocol on the accession of the People's Republic of China.
- (27) Furthermore, some companies argued that by imposing the obligation to apply international accounting standards (IAS) on foreign exporters while they are not imposed on the domestic industry, the Community applies its trade laws not in an 'impartial' way. Thus, it is claimed that the Community industry is put in a more favourable position than exporters. However, it is to be noted that the analysis of whether the companies fulfilled the criteria for obtaining market economy treatment was carried out on the basis of Article 2(7)(c) of the basic Regulation. Since this evaluation has not been done for the Community industry it cannot be said that the Commission is partial in its analysis. Therefore, this argument is not relevant in this case. As far as the first claim is concerned, under Article 2(7)(c) indent 2 of the basic Regulation, the Commission has to examine if the companies have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes. The companies in questions did not fulfil these necessary conditions of the quoted criterion and did not follow the basic principles of accounting. Therefore, this claim had to be rejected.

- (28) Concerning criterion 3, a company claimed that their assets were indeed valued independently. However, no conclusive proof has been provided that assets are recorded at the real market value and it has not been demonstrated that all costs are taken into account at market value.

## 2. Individual treatment (IT)

- (29) Further to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under Article 2(7), except in those cases where companies are able to demonstrate, in accordance with Article 9(5) of the basic Regulation, that (i) in case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits; (ii) their export prices and quantities as well as the conditions and terms of the sales are freely determined; (iii) the majority of the shares belongs to private persons, State officials appearing on the board of Directors or holding key management positions are in minority or it is demonstrated that the company is nonetheless sufficiently independent from the State interference (iv) exchange rate conversions are carried out at market rates; (v) any State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.
- (30) The six exporting producers to which MET could not be granted also claimed individual treatment (IT) in the event they were not granted MET. On the basis of the information available, it was found that four of them met all of the requirements for IT as set forth in Article 9(5) of the basic Regulation.
- (31) Of the two remaining companies, one was found to be partially State owned. In addition, the company was established under special Chinese legislation which provides possibilities for state interference. The company could not demonstrate that it took its decisions free of such state interference. For these reasons, the risk of State interference was deemed significant. Moreover, it is usually very difficult, in particular for customs authorities, to identify the producer of any magnesite brick traded. Therefore, the risk of circumvention of measures by way of exporting via a company with a lower level of duty, which is aggravated by the fact that there is significant risk of state interference, was also deemed significant. Consequently, the conditions set in Article 9(5)(c) and (e) of the basic Regulation were not met. It was therefore decided not to grant IT to this company.
- (32) For the remaining company, the level of cooperation and the data provided was not sufficient to allow for a determination as to whether the company fulfilled all the criteria to be granted IT. For instance, the company was not able to provide, within the deadlines, a reliable transaction listing of its sales to the Community, thereby preventing any calculation of a dumping margin to be made.
- (33) One additional exporting producer requested only individual treatment. This company had sales to related companies in the Community as well as sales to independent parties in the Community. As the company failed to provide the requested information within the deadlines given, the determination as to whether the company fulfilled all the criteria to be granted IT could not be made and the company had to be regarded as a non-cooperating party.
- (34) It was therefore concluded that IT should be granted to the following four exporting producers in the PRC:

— Yingkou Kyushu Refractories Co. Ltd

— Yingkou Guangyang Refractories Co. Ltd

— Dashiqiao Sanqiang Refractory Materials Co. Ltd

— Yingkou Qinghua Refractories Co. Ltd.

### 3. Normal value

#### 3.1. Determination of normal value for all exporting producers not granted MET

##### (a) Analogue country

- (35) According to Article 2(7) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an analogue country.
- (36) In the notice of initiation the Commission indicated its intention to use Turkey as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited the interested parties to comment on this.
- (37) Some interested parties objected to this proposal. The main arguments against Turkey, claimed by them, were:
- insufficient competition on the Turkish domestic market (there are only 3 Turkish producers),
  - Turkey's volume of production amounts to 1,3 % of Chinese production,
  - Chinese producers have a different cost structure, especially with regard to labour costs and the cost of raw materials,
  - PRC and Turkey have different economic and cultural ties with the EU, such as being closer to Europe, benefiting from a customs union with the EU since 1995, and their harmonising of laws with EU standards in light of negotiations on Turkey's accession to the EU,
  - the Turkish currency was strongly devalued; some Turkish producers are related/linked to complainants,
  - and the quality of Turkish products is too low.
- (38) The interested parties suggested India or Russia as appropriate analogue countries.
- (39) The Commission sought cooperation from other potential analogue countries such as: Russia, India, Japan, South Korea, United States of America, Turkey, Serbia Montenegro and South Africa. Out of 38 companies which were contacted all over the world, only two companies from the USA agreed to cooperate.
- (40) The analysis of the information available showed that the USA has a competitive market for the product concerned with at least three producers, around 30 suppliers, more than 15 importers and approximately 300 users. No differences were found to exist between the product concerned and the magnesia bricks produced and sold on the domestic market in the PRC and in the USA as stated in recital 14. In addition, it was found that over 50 % of the raw material used by one of the producers in the USA was imported from PRC and that there are no significant differences in the production process used in the two countries to produce magnesia bricks.

- (41) In view of the above it is provisionally concluded that the United States of America represented the most appropriate and reasonable choice of analogue country in accordance with Article 2(7) of the basic Regulation.

(b) *Determination of normal value*

- (42) Pursuant to Article 2(7)(a) of the basic Regulation, the normal value for the exporting producers not granted MET was established on the basis of verified information received from the producers in the analogue country. Since the transactions by the producers in the USA were found to be made in the ordinary course of trade, the normal value was established on the basis of all prices paid or payable on the domestic market of the USA for product types comparable to those exported to the Community by the Chinese exporters.
- (43) Normal value was established as the weighted average domestic sales price charged to unrelated customers by the cooperating producers in the USA for product types having similar MgO content. Where relevant, adjustments were made for the different treatments incurred by the various product types.

3.2. *Determination of normal value for exporting producers granted MET*

- (44) It is recalled that for the companies granted MET the calculation of any dumping margin was based on the data they submitted on domestic export sales and on the cost of production for the product concerned. This data was verified at the premises of the companies concerned.
- (45) As far as the determination of normal value is concerned, the Commission first established, for each cooperating exporting producer, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total volume of such sales of each exporting producer represented at least 5% of the total export sales volume of the producer to the Community.
- (46) On this basis, it was found that one exporting producer had overall domestic sales of the product concerned which were made in representative quantities during the IP. For the other exporting producer the overall domestic sales of the product concerned during the IP were not made in representative quantities.
- (47) For the exporting producer with representative domestic sales, the Commission subsequently identified those types of magnesia bricks, sold domestically that were identical or directly comparable to the types sold for export to the Community.
- (48) For each type sold on its domestic market and found to be directly comparable to the type of magnesia bricks sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of magnesia bricks were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5% or more of the total sales volume of the comparable magnesia bricks type exported to the Community.
- (49) As a result of this analysis, it was found that the exporting producer with overall representative sales only had representative domestic sales for a few product types.
- (50) The Commission subsequently examined whether the domestic sales of each type of magnesia bricks sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the magnesia bricks type in question.

- (51) Domestic sales transactions were considered profitable where the unit price of a specific product type was equal to or above the cost of production. Cost of production of each type sold on the domestic market during the IP was therefore determined.
- (52) As mentioned in recitals 50 and 51, the proportion of profitable sales to independent customers in the domestic market of the product type in question was established. In cases where the sales volume of a specific magnesia bricks type, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of magnesia bricks type represented less than 80 % of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.
- (53) In cases where the volume of profitable sales of any type of magnesia bricks represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- (54) As a result of the above analysis, it was found that certain product types were sold in the ordinary course of trade.
- (55) For all the product types which were either not sold in representative quantities or which were not sold in the ordinary course of trade by reason of price as set out in recitals 52 and 53, domestic prices of the exporting producer in question could not be used in order to establish normal value and another method had to be applied.
- (56) Wherever domestic prices of a particular type sold by an exporting producer could not be used, constructed normal value had to be calculated based on the costs of the producer in question. Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative (SG&A) expenses and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised on the domestic market constituted reliable data.
- (57) Actual domestic SG&A expenses were considered reliable when the total domestic sales volume of the company concerned could be regarded as representative when compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales of those types which were sold in the ordinary course of trade. For this purpose, the methodology set out in recitals 45, 48, 52 and 53 was applied. For one company, their own SGA and profit could be used because it met the aforementioned criteria.
- (58) For the other company which did not have sufficient domestic sales, the normal value was established on the basis of Article 2(6)(c) of the basic Regulation. It was found that the cost structure of the other company granted MET which had representative domestic sales for some types was so different that it did not constitute a reasonable basis to establish normal value in this case. The costs of the company which did not have representative domestic sales was, however, found reliable and normal value was constructed based on the data of the company as they were in line with those of other exporters or producers of the same product in the country of origin.

#### 4. Export prices

- (59) All export sales to the Community of exporters granted MET or IT were made either via related importers in the Community, via related companies outside the Community or via companies which, whilst not related to the exporting producers nevertheless had a close cooperation with or even an exclusive trading contract. In the cases where the exports were made via related companies the export prices were constructed pursuant to Article 2(9) of the basic Regulation. In all cases, where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.
- (60) Adjustments were made for all costs incurred between importation and resale by that importer, including SG&A expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. In this case, the actual profit margin realised by the cooperating unrelated importers was deemed to be a reasonable basis.

#### 5. Comparison

- (61) The normal value and export prices were compared on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability.
- (62) On this basis, allowances for differences in transport, insurance, handling, loading and ancillary costs, credit, commissions, import charges and after sales costs (warranty/guarantee) were made.

#### 6. Dumping margin

##### 6.1. *For the cooperating exporting producers granted MET/IT*

- (63) For the two companies granted MET, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.
- (64) For the four companies granted individual treatment, the weighted average normal value for each type exported to the Community established for the analogue country was compared with the weighted average export price of the corresponding type exported to the Community, as provided for under Article 2(11) of the basic Regulation.
- (65) The provisional weighted average dumping margins expressed as a percentage of the cif Community frontier price duty unpaid are:

— Liaoning Mayerton Refractories Co. Ltd	11,2 %
— Yingkou Sanhua Refractory Materials Co. Ltd	34,1 %
— Yingkou Guangyang Refractories Co. Ltd	55,7 %
— Yingkou Kyushu Refractories Co. Ltd	55,7 %
— Dashiqiao Sanqiang Refractory Materials Co. Ltd	99,9 %
— Yingkou Qinghua Refractories Co. Ltd	41,4 %

## 6.2. For all other exporting producers

- (66) In order to calculate the dumping margin applicable to all other exporters in the PRC, the Commission first established the level of cooperation. A comparison was made between the total imports of the product concerned originating in the PRC calculated on the basis of Eurostat, according to the methodology established in recital 80, and the actual questionnaire replies received from exporters in the PRC. On this basis, it was established that the level of cooperation was low.
- (67) As the cooperation was low, the dumping margin applicable to all other exporters in the PRC was established at the level of the highest dumping margin calculated for the cooperating exporting producers, i.e. 99,9% of the cif Community frontier price duty unpaid. Nonetheless, the countrywide dumping margin was found to be above the residual injury margin.

## C. INJURY

### 1. Community production

- (68) In the course of the present investigation it was found that magnesia bricks were manufactured by:
- two complainant Community producers and two other producers, which fully cooperated with the Commission during the investigation (RHI, LWB, Refractarios Burceña S.L. and Ceramica Del Nalon SA),
  - one producer, which provided a detailed questionnaire reply, but opposed the proceeding (Refratechnik),
  - seven other producers plus Assopiatrelle (the Italian Refractories Association representing 64 000 tonnes of production), which supported the Community industry but did not provide a detailed questionnaire reply. One further producer submitted a letter but did not express support or opposition.

### 2. Definition of the Community industry

#### 2.1. Producers related to the PRC and/or importing the product concerned from the PRC

- (69) It was found that two of the cooperating producers within the Community also imported the product concerned from the PRC: RHI and Refratechnik. It was, therefore, examined whether these companies should be excluded from the definition of the Community industry according to Article 4(1)(a) of the basic Regulation.

#### 2.1.1. RHI

- (70) RHI produces in the Community but also imports the product concerned from a related joint-venture company in the PRC: RHI Liaoning. It has been found that the vast majority of RHI's sales on the Community market were produced in the Community in the IP, whereas only a minor part was produced in the PRC. This share is low because RHI's production in the PRC is mainly aimed at the fast growing Asian market. RHI is also the biggest producer in the Community and its headquarters, R&D centre and biggest production sites are all located in the Community. It was therefore found that RHI's core business is situated in the Community as regards the product concerned.
- (71) It was further examined what impact the imported sales had on the company's total Community sales. It was found that RHI was not enjoying substantial, in terms of profitability, beneficial effects by reselling imports. This conclusion was reached after comparing the profitability rates of the cooperating Community producers.

- (72) Considering the low import share and the absence of any substantial benefits from these imports on the profitability of all Community sales, it has been established that this company has not been shielded from the negative consequences of the injurious dumping. Therefore, it is considered that an exclusion of RHI from the definition of the Community industry would not be justified.

#### 2.1.2. Refratechnik

- (73) Refratechnik also produces in the Community and imports the product concerned from producers in the PRC. It has been found that almost half of Refratechnik's sales on the Community market were produced in the PRC in the IP. It was also found that most of the expansion of their business is made through increased imports from the PRC. It was, therefore, considered that Refratechnik's core business is not only situated in the Community but also in the PRC.
- (74) It was further examined what impact the imported sales had on the company's total Community sales. It was found that Refratechnik, in contrast to RHI, was significantly benefiting by reselling imports.
- (75) Bearing in mind the high share of imports compared to total Community sales volumes, the fact that the core of the business seems to be gradually shifting to the PRC and the fact that Refratechnik was clearly benefiting from the dumped imports, it is considered that Refratechnik should be excluded from the Community industry according to Article 4(1)(a) of the basic Regulation and will be considered as 'another operator on the market'.

#### 2.2. Community industry

- (76) The production of the four Community producers that fully cooperated in the investigation including RHI and excluding Refratechnik was at 233 732 tonnes during the investigation period. This represents 53% of total Community production and these companies therefore constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.
- (77) The investigation established that there was no captive use of the product concerned within the magnesia bricks producing industry. However, some steel companies produced magnesia bricks for their own use. This volume was small in comparison to volumes produced by the Community refractory producers. Since this production is for the use within the steel industry and none of the steel industry companies cooperated as producers of magnesia bricks (although many of them received questionnaires), this part of production seems to have no significant impact on the Community industry.
- (78) As the Community industry was made up of four companies, two of which comprised around 2% of volume produced, the Community industry data shown below has been indexed for confidentiality reasons.

#### 3. Community consumption

- (79) Consumption was established from standard industry estimates provided by the Community industry according to normal industry practice. This data was calculated based on steel production reports (*source* — International Iron & Steel Institute (IISI), divided by known average use of the product concerned per tonne of steel produced.

- (80) Eurostat information related to import volumes for the relevant CN Codes (6815 91 00, 6815 99 10, 6815 10 10, 6815 99 90, 6902 10 00 and 6903 90 20) were used as the source of the import data. Deductions were made from these figures in order to exclude products which, based on their price, were clearly not the product concerned. This volume net of deductions (which for all countries equalled 73 291 tonnes and for the PRC equalled 59 831 tonnes) was compared to import volumes reported by the Chinese cooperating exporting producers (around 42 000 tonnes). Bearing in mind that (i) around 13 500 tonnes was imported from countries other than the PRC; (ii) data from Community importers and users showed that imports were made from non-cooperating exporters in PRC; and (iii) many other exporting producers in the PRC received a questionnaire but did not cooperate, the Eurostat figure was considered to be an accurate assessment of import volumes. In addition, a Chinese trade press source (China Metallurgical News, 4 January 2004) reported that 80 000 tonnes were exported to Europe in 2003 which also suggests that the above Eurostat figure for the IP (59 831) is by no means excessive.
- (81) Community industry sales on the Community market were obtained from the verified questionnaire responses of the five cooperating Community producers (including Refratechnik). The balance (i.e. consumption minus imports, minus Community industry sales volumes) was deemed to be sales volumes of non-cooperating Community producers.
- (82) This consumption, as presented in the following table, shows that demand of the product concerned in the Community was stable over the period considered.

	2001	2002	2003	IP
Community consumption	399 563	397 203	401 499	400 638
<i>Index 2001 = 100</i>	100	99	100	100

#### 4. Imports into the Community from the country concerned

##### 4.1. Market share of imports concerned

- (83) The evolution of imports from the country concerned, in volume and market share, has been the following:

Import volumes	2001	2002	2003	IP
PRC	23 980	44 542	54 181	59 831
<i>Index 2001 = 100</i>	100	186	226	250

Market shares of the imports	2001	2002	2003	IP
PRC	6,0 %	11,2 %	13,5 %	14,9 %

- (84) Whereas the consumption of magnesia bricks remained stable during the period under consideration, the imports from the country concerned have risen by around 150% in the same period. In consequence, the market share of the PRC has more than doubled during the period considered from 6,0% to 14,9%.

##### 4.2. Prices of imports and undercutting

	2001	2002	2003	IP
Import prices from the PRC (Source: Eurostat)	686	601	560	533
<i>Index 2001 = 100</i>	100	88	82	78

- (85) The above table shows the development of average import prices from the PRC. Over the period considered prices fell by 22 %.
- (86) A comparison of selling prices on the Community market during the IP was made between the prices of the Community industry and those of the exporting producers in the country concerned. This comparison was made after deduction of rebates and discounts. The prices of the Community industry were adjusted to ex-works prices, and the prices of the imports were cif Community frontier.
- (87) The comparison showed that during the IP imports of the product concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter by 16,6 %. From this level of undercutting and the price development of the Community industry, as explained below, it is clear that substantial price depression had already taken place.

#### 5. Situation of the Community industry

- (88) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 2001 (base year) to the IP.
- (89) The Community industry data below represent the aggregated information of the four cooperating Community producers.

##### 5.1. Production, production capacity and capacity utilisation

- (90) The evolution of production, production capacity and capacity utilisation is the following:

<i>Indices 2001 = 100</i>	2001	2002	2003	IP
Production (tonnes)	100	88	89	91
Production capacity (tonnes)	100	90	84	84
Production utilisation (%)	100	98	106	108

- (91) As shown in the table above, production during the period considered decreased by 9 %. Production capacity was reduced by 16 % in order to cut costs which led to an 8 % increase in capacity utilisation.

##### 5.2. Stocks

- (92) The figures below represent the volume of stocks at the end of each period:

	2001	2002	2003	IP
Stocks (tonnes)				
<i>Index 2001 = 100</i>	100	109	105	108

- (93) Stocks have increased during the period considered by 8 %. It is to be noted that the Community industry generally produces the product concerned to order. Consequently, the level of stocks held by the Community industry was found not to be a significant indicator in the assessment of the situation of the Community industry.

### 5.3. Sales volume, market shares, growth and average unit prices in the Community

- (94) The figures below represent the Community industry's sales to independent customers in the Community.

<i>Indices 2001 = 100</i>	2001	2002	2003	IP
Sales volume (tonnes)	100	97	99	100
Market Share	100	97	98	100
Average sales prices (EUR/tonne)	100	98	89	89

- (95) The Community industry's sales volumes and market share were stable during the period considered. However, this was only achieved at the expense of a reduction in average sales prices of 11 % as dumped imports penetrated the Community market.

- (96) It must also be noted that the decrease in average prices of 11 % is understated vis-à-vis the fall in prices of major product segments. The product concerned is used in the steel industry for lining three main types of vessels; ladles, converters and electric arc furnaces. Initially, Chinese imports were mainly in the low value segment of ladle bricks. However, over the period concerned there has been a trend towards penetration of the converters and electric arc furnace segments. The utilisation of converters and electric arc furnaces needs to be maximised and more high quality and high cost bricks are required to increase the number of heats before a lining is changed. An analysis of sales patterns over the period considered showed that the Community industry moved more into the lower volume but higher value segments in order to defend itself from the pressure from Chinese imports. With this in mind, it is clear that average prices for some individual product types have fallen by more than 11 %. For example the average price of the largest brick group (containing 9 % residual carbon and fused magnesia) fell by 19 % over the period considered.

- (97) Facing increasing imports, the Community industry could not grow despite reducing its average prices. In contrast, they were forced to reduce production capacity and work force.

### 5.4. Profitability

- (98) The profitability shown below is return on turnover (RoT), in terms of sales on the Community market.

	2001	2002	2003	IP
Profitability on Community Sales (RoT)	100	76	26	45

- (99) The profitability decreased substantially from 2001 to 2003 due to the reduced prices and coincided with increases of dumped imports from the PRC. Profitability slightly improved in the IP, which was achieved mainly because of reduced costs. Furthermore, the profit level during the IP, although above breakeven, was well below a level which this type of industry could be expected to achieve in the absence of dumped imports. As can be seen in the year 2001, when dumped imports still held a relatively low market share, the profit level which could be expected would be much higher.

5.5. *Return on investments, cash flow, investments and ability to raise capital*

- (100) The trends for the return on investments, cash flow and investments are shown in the following table.

<i>Indices 2001 = 100</i>	2001	2002	2003	IP
Return on investments	100	85	50	52
Cash flow	100	81	55	60
Investments	100	75	131	134

- (101) It is noted that the above trend figures for return on investments reflect to a large extent those on profitability (return on turnover) above. The cash flow also shows approximately the same trend, namely decreasing from 2001 to 2003 and a slight improvement in the IP. The falling return on investments and cash flow resulted from the fact that average sales prices were falling more quickly than the average costs for products sold.
- (102) The Community industry has increased its investments. These were replacement investments in plant and machinery rather than investments in new production facilities.
- (103) The Community industry's ability to raise capital, either from external providers of finance or parent companies, was nevertheless not seriously affected during the period considered because the companies belong to larger groups. Thus, the ability to raise capital is primarily judged on the basis of the strength of the group and not necessarily on the basis of the merits of the business sector concerned. Therefore, this factor does not seem to be relevant for this investigation.

5.6. *Employment, productivity and wages*

<i>Indices 2001 = 100</i>	2001	2002	2003	IP
Number of employees	100	91	92	93
Productivity (tonne/employee)	100	96	98	98
Wages	100	84	82	82

- (104) As seen above, the Community industry decreased its number of employees from 2001 to the IP. The increase in 2003 to the IP can be explained by increased production. Productivity was largely stable over the period.
- (105) Wages decreased substantially in 2002 but have remained stable up to the IP. This was due to a programme of restructuring in that year as can be seen from production and employment trends shown above.

5.7. *Magnitude of the actual margin of dumping*

- (106) The dumping margins are specified above in the dumping section. These margins established are clearly above *de minimis*. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.

5.8. *Effects of past dumping or subsidisation*

- (107) The Community industry is not recovering from the effects of past dumping or subsidization since no such previous investigations have been made.

### 5.9. Conclusion on injury

- (108) It is recalled that while sales volumes and market share in the Community were relatively stable, the Community industry suffered average prices decreases of 11 % in the period considered, despite developing its product mix to higher value product types. Notwithstanding cost cuts, profit levels decreased significantly resulting in a profit in the IP which is 55 % below the level in 2001 and is substantially below the profit level which could be expected without dumped imports.
- (109) The declining situation of the Community industry in the period considered is also confirmed by the reduced production and production capacity, the decrease of wages and employment, return on investment, cash flow and a lack of growth despite reducing average prices by 11 %.
- (110) The above negative developments occurred at a time of rather stable productivity, increased investments and improved capacity utilisation. Developments in respect of stocks and ability to raise capital were not considered meaningful for the reasons explained above.
- (111) Bearing in mind all these indicators, it is provisionally concluded that the Community industry has suffered material injury during the IP within the meaning of Article 3 of the basic Regulation.

## D. CAUSATION

### 1. Preliminary remark

- (112) It was also examined whether there is a causal link between the dumped imports from the PRC and the injury suffered by the Community industry. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

### 2. Impact of the imports from the PRC

- (113) It is recalled that import volumes from the PRC increased by around 150 % and their market share increased by 118 % during the period considered. In addition, as has been explained at recital 85, import prices from the PRC fell by 22 % and substantial price undercutting was taking place (see recital 87). The Community industry reacted to these imports by maintaining its sales volume (in order not to endanger economies of scale) but had to significantly lower its prices. This fall in prices led *inter alia* to a 55 % fall in profitability. This profitability is well below that expected of this type of industry and is no longer sustainable.

### 3. Impact of imports from third countries

<i>Indices 2001 = 100</i>	2001	2002	2003	IP
Non-Chinese imports	100	90	140	141

NB: The above figures are indexed in order that calculations cannot be made of confidential data relating to the Community industry.

- (114) It is very unlikely that imports originating in other third countries, such as the Republic of Korea and Brazil could have contributed to the injury suffered by the Community industry. The market share of non-Chinese imports in the IP was only at around 3 %. In addition, the average prices of imports from the Republic of Korea and Brazil (i.e. countries from which the largest volumes of non-Chinese imports originated) were 25 % and 47 % higher than those originating in the PRC. It can be concluded, therefore, from their market share and their relatively high price levels that their contribution to the injury suffered could only have been a minor one, if any.

#### 4. Impact of competition between Community producers and overcapacity

- (115) Some interested parties claimed that overcapacity within the Community refractory industry had forced the Community industry to compete by reducing prices to an injurious level. However, the capacity utilisation levels identified by the investigation and shown in indexed form at recital 90 over the period considered did not support this argument of overcapacity. Rather, it showed capacity levels resembling those of the steel industry and other similar industries. Whilst it is clear that capacities have been reduced and prices have fallen, this has, in major part, been a response to the increased dumped imports from the PRC. The Commission notes also that the major restructuring of the Community refractory industry had already taken place in the late 1990s.

#### 5. Impact of developments within the steel industry

- (116) It was alleged that the technical progress resulting in longer lasting bricks and an efficient steel making process were causing the injury suffered by the Community industry. During the investigation it was pointed out by various steelmakers that due to technical progress, consumption of magnesia bricks per tonne of steel produced had decreased.

	2001	2002	2003	IP
EU-25 Steel production (kilotonnes)	180 531	180 758	183 441	185 197
EU-25 Consumption of magnesia bricks in (tonnes)	399 563	397 203	401 499	400 638
Use of bricks in steel (tonnes per kilotonne)	2,21	2,20	2,19	2,16

The above table shows that the magnesia bricks use in steel was only around 2%. A fall of this small magnitude would not explain the reductions in sales prices and profitability, as explained above in the section on injury. Therefore, it is considered that the effects of the better technical quality of the bricks could not have been a significant cause of the injury suffered by the Community industry.

- (117) It was found during the investigation that some steel producers continue to produce some magnesia bricks themselves. No indication has, however, been found that this practice has increased over the period. Furthermore, as no steel company cooperated as a magnesia bricks producer, it was clear that this sector of production had no effect on the Community industry's economic situation.

#### 6. Impact of currency changes

- (118) Another factor which is claimed to have caused the injury is the currency exchange rate of the dollar against the euro. This is potentially important since the Chinese renminbi has been pegged to the dollar for many years and it is argued that fluctuations in dollar/euro rates have made it more attractive for Chinese producers to export to the Community.

- (119) However, the fall of the dollar compared to the euro has not always coincided with the increases in imports. The exchange rate fall began in June 2002 whereas imports started to increase significantly in 2001. Furthermore, it should be stated that freight rates from the PRC to the Community have increased considerably over the period considered. If imports from the PRC were increasing simply because exchange rate fluctuations had created better market conditions, then it could also be expected that imports would fall, or at least stabilise, if such currency fluctuations have been compensated by increased freight rates. While this compensation indeed took place (during the final 15 months of the period considered freight rates increased by around 25% (source P&O Nedlloyd)), imports have nevertheless continued to increase.

- (120) Therefore, it is provisionally concluded that the impact of currency changes can hardly have contributed to the injury suffered by the Community industry.

#### **7. Impact of imports to the Community by the Community industry**

- (121) Some interested parties also claimed that injury was self-inflicted because the Community industry also imported the product concerned from the PRC. It is recalled that RHI, which is included in the Community industry, imported 5 % of its total Community sales volume from the PRC during the IP. However, the import share and the price difference for these imports compared to the Community sales are relatively small and could not have had a major impact on the market.

#### **8. Impact of exports by the Community industry**

- (122) During the IP around 27 % of Community industry production volume was exported outside the Community. The volume of exports fell only slightly over the period. However, the profitability of these exports was higher than the sales on the Community market and could not be said to have had any negative impact on the injury suffered by the Community industry.

#### **9. Conclusion on causation**

- (123) It should be recalled that the injury in this case is primarily price depression causing reduced profitability. Bearing in mind that the rapidly increasing imports from the PRC undercut substantially the Community industry prices, there is no indication that the abovementioned other factors could have been a significant cause of the material injury suffered by the Community industry. No further other factors have been found in the course of the investigation that could have caused material injury.
- (124) Based on the above analysis of the effects of all known factors on the situation of the Community industry, it is provisionally concluded that there is a causal link between the dumped imports from the PRC and the material injury suffered by the Community industry.

### **E. COMMUNITY INTEREST**

#### **1. General considerations**

- (125) It has been examined whether compelling reasons exist that could lead to the conclusion that it would not be in the Community interest to impose anti-dumping duties against imports from the country concerned. The Commission sent questionnaires to importers, industrial users and suppliers. Questionnaire replies were received from 14 users, five suppliers and three unrelated importers.
- (126) On the basis of the information received from the cooperating parties, the following conclusions are reached.

#### **2. Interest of the Community industry**

- (127) It is recalled that the Community industry consisted of four producers which employ around 800 staff for the production and sales of the product concerned. It is also recalled that the economic indicators of the Community industry above showed deteriorating financial results during the period considered. Despite the slight improvement during the IP, the Community industry could not reach a satisfying financial situation due to dumped imports from the PRC.
- (128) If measures were not imposed it is clear that more and more production in the Community will be closed and that steel companies will be forced to rely much more heavily on Chinese production. There are few production sites around the world currently and the vast majority of raw materials (especially magnesium oxide) are located in the PRC. Therefore, there are no large-scale sources of supply in other third countries. On the other hand, based on the above, the Community industry would obviously benefit from the adoption of anti-dumping measures.
- (129) It is, therefore, provisionally concluded that anti-dumping measures would be in the interest of the Community industry.

### 3. Interest of unrelated importers

- (130) Four companies completed the questionnaire for unrelated importers, although only two of these imported the product concerned during the IP. The cooperating importers opposed the imposition of measures and claimed that there were only a few large refractory producers in the Community and that the imports of Chinese bricks had enhanced competition on the Community market. Should measures be imposed and prices raised, Chinese companies may reduce sales to the Community and the importers would suffer losses through reduced trading and reduced profitability.
- (131) One importer argued that they may have to close down their businesses employing eight staff, as the product concerned represents a major proportion of their business. However, the purpose of the anti-dumping measures is neither to prohibit imports nor to hamper the activities of the importers in the Community. As the proposed measures affect only a relatively small proportion of the Community steel industry's total costs and there are existing business relationships established between Chinese exporting producers and the Community users based on specific technical requirements, it is likely that the traditional business of the importers will continue even if anti-dumping measures against dumped imports are imposed.
- (132) Furthermore, it was found that the other importer could suffer no substantial consequences if measures were imposed since the product concerned comprises much less than 1 % of total company turnover.

### 4. Interest of suppliers

- (133) The suppliers which cooperated in the investigation supported the proceeding. Two companies, which had been supplying Community industry with the main raw material for magnesia bricks, dead burned magnesite, claimed that they had to stop supplying the refractory industry some years ago because Chinese raw material and, later on, Chinese magnesia bricks entered the market.

### 5. Interest of users

#### 5.1. Preliminary remark

- (134) 14 user companies, i.e. steel producers, submitted questionnaire responses and a further producer and Wirtschaftsvereinigung Stahl (the German Steel Association) made submissions. One further user expressed support for the Community industry's complaint but all other steel companies opposed the imposition of anti-dumping measures. In total, the user companies represented about 38 % of Community magnesia brick consumption.

#### 5.2. Highly sensitive product

- (135) Refractories are a strategically very important material for the steel industry. All the steel they produce passes through the converters, furnaces and ladles which are lined with magnesia bricks. The consequence of refractory failure could, therefore, have material repercussions in terms of interrupted production, repairs and safety. Therefore, high quality, i.e. long lasting bricks, and good technical support is a very important factor for this kind of product. Because of these high technical requirements, it takes a long time, high investments and research to build a supplier relationship. Also the change from one Chinese producer to another producer would be very difficult. The steel producers claim that they have made good progress in the last two years with Chinese producers and their importers in the Community, especially because efficiency was improved and innovations have been made.
- (136) The opposing companies consequently fear that there would be a serious risk of shortage of high quality bricks with adequate technical support. They fear that Chinese producers would disappear from the Community market if measures were imposed. In addition, the main reserves of magnesite, which is the main raw material of magnesia bricks, are situated in the PRC. The steel industry is therefore afraid that their relations with Chinese raw material suppliers might be impaired.

- (137) As stated earlier, the purpose of the anti-dumping measures is neither to prohibit imports nor to hamper the activities of the steel producers. Consequently, non-injurious imports could still enter the Community market. Therefore, established relationships with Chinese exporters could be continued even if anti-dumping measures against dumped imports are imposed. This is confirmed by the fact that the product concerned only represents an insignificant part in the total cost of production of steel producers, so that the impact of measures on the costs of users is negligible (see below recital 143).
- (138) It should also be pointed out that the product concerned is of strategic importance for the steel industry. If measures are not imposed, there is a risk of a transfer of the production of the product concerned to the PRC in the long-term. Bearing in mind the lack of important producers in other third countries, such a reliance on Chinese imports is clearly not a viable scenario for the steel industry.
- (139) Furthermore, there is no substantiated evidence concerning a possible impact on access to raw material for those steel makers which produce magnesia bricks themselves.

### 5.3. Market structure

- (140) The user industry claimed that measures would strengthen a market structure consisting of few important producers. The users claimed that this situation of a lack of competition developed due to mergers and acquisitions in the refractory industry in the 1990s.
- (141) The largest producer on the Community market had around 30 % market share in the IP which is unlikely to be large enough for them to control and dominate the market. This is supported by the fact that imports from the PRC have been able to erode their market share. As outlined above, these imports will in all likelihood continue after the imposition of measures. Furthermore, many smaller companies produce magnesia bricks in the Community, including some steel companies themselves, and no evidence was provided during the investigation of how the large players on the Community market have dominated the market to the extent claimed. As there was no evidence of any anti-competitive behaviour, the allegation remains unfounded and unsubstantiated.

### 5.4. Increased costs

- (142) The steel industry also argued that anti-dumping duties on magnesia bricks would generate additional costs in the highly price sensitive steel market, particularly in respect of competition with steel producers outside the Community. Therefore, anti-dumping duties would have an impact on the steel industry's competitiveness. Especially, as pressure on the markets for other raw materials for steel products is also very high.
- (143) However, the questionnaire responses of the user industry show that the costs for magnesia bricks account for significantly less than 1 % of total costs. Therefore, the proposed anti-dumping duties would have only a marginal influence on the total costs in the steel making process. Furthermore, recent developments in the steel industry clearly show much improved sales prices and profitability, which means that the importance of magnesia bricks in total sales turnover is reduced further.

### 5.5. Conclusion on users' interest

- (144) Considering the above, it is unlikely that anti-dumping measures would lead to a shortage of supply or to a non-competitive situation on the Community market, in particular, as Chinese magnesia bricks are still likely to retain the current market share. As regards the cost increase, it was found that it would only be marginal and would not materially affect the competitiveness of the steel industry. Therefore, it is provisionally considered that users' interest is not such as to prohibit the imposition of measures.

#### 6. Conclusion on Community interest

- (145) The imposition of measures on imports of magnesia bricks originating in the countries concerned would clearly be in the interest of the Community industry. As regards both the importers/traders and the user industries, any impact on prices of magnesia bricks is expected only to be marginal. In contrast, the losses of market share, price reductions and profitability losses suffered by the Community industry are clearly of greater magnitude.
- (146) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping duties on imports of magnesia bricks originating in the PRC.

### F. ANTI-DUMPING MEASURES

#### 1. Injury elimination level

- (147) In view of the conclusions reached with regard to dumping, injury and Community interest, measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (148) The measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 8% of turnover based on profit levels obtained prior to the existence of dumped imports. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the abovementioned profit margin of 8% to the cost of production.
- (149) The necessary price increase was then determined on the basis of a comparison of the weighted average import price with the average non-injurious price. A 10% allowance was added to the import prices for three reasons. Firstly, the Community industry production sites were located close to steelworks, whereas transport and insurance costs from ports of entry to the Community for imports were usually higher. Secondly, the Community industry included technical support, as part of the purchase price to the relevant steelworks, whereas the exporters usually did not. Thirdly, all sales by the Community industry were at end-user level, whereas many import transactions were at the level of traders which had additional costs.
- (150) Any difference resulting from this comparison was then expressed as a percentage of the average import cif value. This comparison was made using groupings of PCN numbers as explained at recital 11.
- (151) The provisional weighted average injury margins for companies granted either IT or MET status were:

— Liaoning Mayerton Refractories Co. Ltd	17,1 %
— Yingkou Sanhua Refractory Materials Co. Ltd	42,1 %
— Yingkou Kyushu Refractories Co. Ltd	21,9 %
— Yingkou Guangyang Refractories Co. Ltd	21,9 %
— Yingkou Qinghua Refractories Co. Ltd	54,6 %
— Dashiqiao Sanqiang Refractory Materials Co. Ltd	66,1 %

- (152) In order to calculate the countrywide injury elimination level for all other exporters in the PRC, it should be recalled that the level of cooperation was low. Therefore, a margin was calculated on the basis of the data of those cooperating exporters, to which neither MET nor IT was granted. As this injury elimination level was found to be lower than the highest injury margin established for the companies listed above and in order to avoid giving an incentive for non-cooperation, the countrywide injury margin was set at the level of the highest margin established above, i.e. 66,1 %.

## 2. Provisional measures

- (153) In the light of the foregoing, it is considered that in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties on imports of the product concerned originating in the PRC should be imposed. The anti-dumping duties should be set at the lower of the dumping and injury margins, in accordance with the lesser duty rule. Since the level of cooperation was low, the residual margin should be set at the highest margin calculated for the cooperating exporting producers, i.e. 66,1 % of the cif Community frontier price, duty unpaid. The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (154) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission<sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (155) The proposed anti-dumping duties are the following:

Company	Injury elimination margin	Dumping margin	Proposed anti-dumping duty
Liaoning Mayerton Refractories Co. Ltd	17,1 %	11,2 %	11,2 %
Yingkou Sanhua Refractory Materials Co. Ltd	42,1 %	34,1 %	34,1 %
Yingkou Kyushu Refractories Co. Ltd	21,9 %	55,7 %	21,9 %
Yingkou Guangyang Refractories Co. Ltd	21,9 %	55,7 %	21,9 %
Yingkou Qinghua Refractories Co. Ltd	54,6 %	41,4 %	41,4 %
Yingkou Orind Refractories Ltd	66,1 %	99,9 %	66,1 %
Dashiqiao Sanqiang Refractory Materials Co. Ltd	66,1 %	99,9 %	66,1 %
RHI Refractories Liaoning Co. Ltd	66,1 %	99,9 %	66,1 %
Dashiqiao City Magnesite Refractory Factory Co., Ltd	66,1 %	99,9 %	66,1 %
All other companies	66,1 %	99,9 %	66,1 %

<sup>(1)</sup> European Commission  
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Direction B  
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### G. FINAL PROVISION

(156) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the People's Republic of China, falling within CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90 (TARIC codes 6815 91 00 10, 6815 99 10 20 and 6815 99 90 20).

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community frontier price, before duty, of the products described in paragraph 1, shall be as follows:

Manufacturer	Anti-dumping duty (%)	TARIC additional code
Liaoning Mayerton Refractories Co. Ltd, Jinqiao Development Zone, Dashiqiao, Liaoning Province, 115100, PRC	11,2	A632
Yingkou Sanhua Refractory Materials Co. Ltd, Gangdu Management Zone, Dashiqiao City, Liaoning Province, 115100, PRC	34,1	A633
Yingkou Kyushu Refractories Co. Ltd, Houlashan, Jinqiao Village, Dashiqiao City, Liaoning Province 115100, PRC	21,9	A634
Yingkou Guangyang Refractories Co. Ltd, Houlashan, Jinqiao Village, Dashiqiao City, Liaoning Province, 115100, PRC,	21,9	A635
Yingkou Qinghua Refractories Co. Ltd, Qinghuayu Village, Qinghua District, Dashiqiao City, Liaoning Province, 115100, PRC	41,4	A636
Yingkou Orind Refractories Ltd, Wanghai, Bayuquan, Yingkou, Liaoning, 115007, PRC	66,1	A637
Dashiqiao Sanqiang Refractory Materials Co. Ltd, Biangan Village, Nanlou Economic Development zone, Dashiqiao City, Liaoning Province, 115100, PRC	66,1	A638
RHI Refractories Liaoning Co. Ltd, Shenjingzi, Bayuquan, Yingkou, Liaoning, 115007, P.R. PRC	66,1	A639
Dashiqiao City Magnesite Refractory Factory Co. Ltd, No. 8, Heping Yuzigou, Dashiqiao City, Liaoning Province, 115100, PRC	66,1	A640
All other companies	66,1	A999

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 30 days of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 3*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 1 of this Regulation shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 April 2005.

*For the Commission*  
Peter MANDELSON  
*Member of the Commission*

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