

COMMISSION REGULATION (EEC) No 3541/82

of 22 December 1982

imposing a provisional anti-dumping duty on imports of natural magnesite, caustic-burned, originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, as amended by Regulation (EEC) No 1580/82⁽²⁾, and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for under the abovementioned Regulation,

Whereas in June 1982 the Commission received a complaint lodged by Grecian Magnesite Mining Industrial Shipping and Commercial Co. SA, acting on its own behalf and on behalf of Financial-Mining-Industrial and Shipping Corporation (FIMISCO) and Macedonian Magnesite Mining-Industrial Shipping Inc. (both members of the Scalistiri Group), Mining Trading and Manufacturing Ltd and Magnomin — General Mining Company SA; whereas these four Greek producers represent the total Community production of the product in question; whereas the complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding; whereas the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽³⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of natural magnesite, caustic-burned, falling within NIMEXE code ex 25.19-59 and originating in the People's Republic of China, and commenced an investigation;

Whereas the Commission officially so advised the exporters and importers known to be concerned as well as the representatives of the exporting country;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to request an oral hearing;

Whereas the exporters and the majority of the importers and one user mentioned in the complaint have, to some extent, made their views known in writing; whereas one of the importers has requested and been granted an oral hearing;

Whereas, at the request of the complainants, the parties directly concerned or their representatives were given an opportunity to meet in accordance with Article 7 (6) of Regulation (EEC) No 3017/79 in order to discuss the comparability of the products involved within the meaning of Article 2 (12) of the same Regulation, and in particular the characteristics and uses of these products;

Whereas the Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the above complainants as well as of a manufacturer of caustic-burned natural magnesite in Spain;

Whereas it has been argued by an importer that the differences in the products exported by China, on the one hand, and those used for the establishment of dumping and injury, i.e. from Spanish and Greek products respectively, on the other hand, are so great as to prevent them from being regarded as 'like products'; whereas, however, the information so far available to the Commission shows that, although the chemical composition of these products varies, in particular with regard to their contents in Fe₂O₃, SiO₂: CaO and Al₂O₃, they all consist preponderantly of MgO; whereas the MgO content for all products under consideration lies in a range from 70 to 91 %; whereas variations in the chemical composition and the bulk density, loss on ignition and granular size may be relevant for certain specific uses of these products; whereas, however, despite these differences all the products are used mainly for the same purposes, in particular as an ingredient for fertilizers and cattlefeed as well as in the paper, chemical, pharmaceutical, electrofused magnesia and building industries;

Whereas at the present stage of the investigation the Commission therefore has arrived at the preliminary conclusion that the arguments advanced by several exporters and importers are not sufficiently convincing to refute the *prima-facie* presumption that all the grades of magnesite in question are 'like products';

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No L 178, 22. 6. 1982, p. 9.

⁽³⁾ OJ No C 162, 29. 6. 1982, p. 2 and OJ No C 192, 27. 7. 1982, p. 7 (corrigendum).

Whereas the Commission's investigation of dumping covered the period 1 July 1981 to 30 June 1982 and was limited to caustic-burned natural magnesite with a MgO content between 70 and 91 % ;

Whereas, in order to establish whether the imports from the People's Republic of China were dumped, the Commission had to take account of the fact that this country does not have a market-economy and the Commission therefore had to base its determination on the normal value in a market-economy country ; whereas, in this connection, the complainants had suggested that prices on the Spanish market should be used for this purpose ;

Whereas it was suggested by an importer that Austria constituted a market more suitable for this purpose ; whereas, however, evidence to support his evidence was only presented at a relatively late stage of the investigation ; whereas, there are still no grounds to believe that the use of Austria as the reference country would substantially influence the outcome of this proceeding ;

Whereas the Commission's preliminary investigation in Spain showed that there is production there on a substantial scale and that, given the financial results of the Spanish producer, the price level of its magnesite is in reasonable proportion to its production costs ;

Whereas it has been argued however that the ore used for Chinese production has an exceptionally high raw magnesite content, thereby giving these producers an exceptional natural competitive advantage as compared to Spanish producers ; whereas it is difficult for the Commission, especially at this preliminary stage of the investigation, to establish whether any natural comparative advantages exist in China, and if so, how normal value should reflect such advantage, if the same conditions existed in the market-economy country used for establishing normal value ; whereas the Commission has therefore not been able to decide whether this factor should be taken into account ; whereas the Commission, in order to ensure that the normal value is established in an appropriate and not unreasonable manner, will continue to examine the question of whether such an adjustment should be made ;

Whereas export prices were determined on the basis of the prices paid or payable for the products exported to the Community ;

Whereas, in comparing normal value with export prices, the Commission took account, where appropriate, of differences affecting price comparability ;

Whereas all comparisons were made at ex-works level ;

Whereas the above preliminary examination of the facts shows the existence of dumping in respect of

China National Metals and Minerals Import and Export Corporation and China Metallurgical Import and Export Corporation, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community ;

Whereas in relation to the product concerned the average margin was 24 % ;

Whereas, with regard to exports from China, only several branches of the abovementioned China National Metals and Minerals Import and Export Corporation were named in the complaint ; whereas during the preliminary investigation one of the importers informed the Commission that the China Metallurgical Import and Export Corporation had also exported the product concerned to the Community during the investigation period ;

Whereas the Commission made an effort in order to obtain information concerning the quantities and prices of these imports into the Community ; whereas the Commission has not received precise information in this respect ;

Whereas the Commission considered that the results of its investigation provided an accurate basis for determination of the level of dumping and that it would constitute a bonus for non-cooperation to assume that the dumping margin for China Metallurgical Import and Export Corporation was any lower than the dumping margin of 24 % determined with regard to the other exporter who had cooperated in the investigation ; whereas, for these reasons, it is considered appropriate to use this latter dumping margin for this exporter ;

Whereas, with regard to injury caused by the dumped imports the evidence available to the Commission shows that imports into the Community from the People's Republic of China of caustic-burned natural magnesite increased from 32 794 tonnes in 1978 to 41 380 tonnes in 1979 and 61 931 tonnes in 1980 ; whereas the level dropped slightly to 59 983 tonnes in 1981 and reached 19 636 tonnes during the first half of 1982 ;

Whereas, on the basis of the information available to the Commission, the best estimate shows that the market share held by Chinese exporters has risen from 12.1 % in 1978 to 14.3 % in 1979, to 22.1 % in 1980 and to 23.8 % in 1981 ;

Whereas the average resale prices of the product concerned originating in the People's Republic of China undercut the prices of the Community producers during the investigation period by 7 % ; whereas the resale prices of these imports were lower than those required to cover the costs of Community producers and to provide a reasonable profit ;

Whereas, as regards the impact on the Community industry, the evidence available to the Commission shows that the Community production of the product concerned has dropped from 100 000 tonnes in 1979 to 69 000 tonnes in 1980 and remained at the same level in 1981 and was at 12 000 tonnes during the first quarter of 1982; whereas, however, the latter figure appears not to be representative on a yearly basis;

Whereas the average capacity utilization by Greek producers of the product concerned dropped from 70.6 % in 1979 to 40 % in 1981;

Whereas the total sales by Greek producers of the product concerned dropped from 101 000 tonnes in 1979 to 67 000 tonnes in 1981; whereas the average market share of the sales of the product concerned held by the Greek producers in the EEC dropped according to their own estimates from 65 % in 1978 to 62 % in 1979, to 38 % in 1980 and to 37 % in 1981;

Whereas the losses by two main Greek producers reached 9.35 % in 1981;

Whereas the number of people employed in Greece in the manufacture of the product concerned has remained relatively stable during recent years;

Whereas the Commission has considered whether injury has been caused by other factors; whereas consumption in the Community has declined; whereas, however, it has been established that this decline has affected Community production more than it has affected the dumped imports; whereas, however, the substantial increase in dumped imports and the prices at which they are offered for sale in the Community led the Commission to determine that the effects of dumped imports of caustic-burned natural magnesite, originating in the People's Republic of China, have to be considered as constituting material injury to the Community industry concerned;

Whereas an importer has argued that the introduction of protective measures would not be in the Community interest because it would cause hardship for a significant proportion of consumers and would almost certainly cause further unemployment among different handling companies and users of the product concerned; whereas, if Community producers disappeared from the market, the Community would become dependent upon external suppliers of this product; whereas it seems to be in the interest of users to have access to both sources of supply; whereas, in view of this and the particularly serious difficulties

facing the Community industry, the Commission has nevertheless come to the conclusion that it is in the Community's interest that action be taken; whereas, in order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti-dumping duty;

Whereas, having regard to the extent of the injury caused, the rate of such duty should be less than the dumping margins provisionally established but adequate to remove the injury caused;

Whereas, having compared the Community producers weighted average prices and costs, the Commission determined that injury would, at present, be removed if the amount of the duty applicable to all imports of natural magnesite, caustic-burned with a MgO content between 70 and 91 % originating in China corresponded to the amount by which the free-at-Community-frontier price, before duty, to the first importer in the importing Member State is less than 145 ECU;

Whereas a period should be fixed within which the parties concerned may make their views known and request an oral hearing,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on natural magnesite, caustic-burned, with a MgO content between 70 and 91 %, falling within Common Customs Tariff subheading 25.19 ex B and corresponding to NIMEXE code ex 25.19-59, originating in the People's Republic of China.

2. The amount of the duty shall be equal to the amount by which the price per tonne net, free-at-Community frontier, before duty, is less than 145 ECU.

The free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days from the date of shipment; they shall be increased or reduced by 1 % for each increase or decrease of one month in the period for payment.

3. The provisions in force concerning customs duties shall apply for the application of the duty.

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

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views and apply to be heard orally by the Commission within one month of the entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, it shall apply until such time as the Council adopts definitive measures, and in any event for a period of four months.

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

Done at Brussels, 22 December 1982.

For the Commission
Wilhelm HAFERKAMP
Vice-President
