COMMISSION REGULATION (EEC) No 3542/82

of 22 December 1982

imposing a provisional anti-dumping duty on imports of natural magnesite, dead-burned (sintered), originating in the People's Republic of China and in North Korea

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 Financial-Mining-Industrial and Shipping Corporation (FIMISCO) and Macedonian Magnesite Mining-Industrial and Shipping Inc. (both members of the Scalistiri Group) acting on their own behalf and on behalf of Grecian Magnesite Mining Industrial Shipping and Commercial Co. SA, Magnomin — General Mining Company SA, Mining Trading and Manufacturing Ltd and Larco ; whereas these four Greek producers represent 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, dead-burned (sintered), falling within NIMEXE code 25.19-51 and originating in the People's Republic of China and in North Korea, 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 countries ;

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 mentioned in the complaint and the majority of the importers have made, to some extent, their views known in writing ; whereas some of the importers have requested and been granted oral hearings ;

Whereas submissions were made by several Community processors and users or their associations of the product concerned ;

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 natural magnesite, dead-burned (sintered) in Spain ;

Whereas a number of importers have argued that the differences in the products exported by China and North Korea, 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 Fe_2O_3, SiO_2 : CaO and Al_2O_3, they all consist preponderantly of MgO ; whereas the MgO content for all products under consideration lies in a range from 85 to 92 %, which characterizes them as low-quality products ; 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 the main use of all the products is in the refractory producers industry which uses them not only for the production of refractory bricks, but also in the refractory repair masses ;

[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 at the present stage of the investigation the Commission has arrived at the provisional 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';

Whereas the Commission's investigation of dumping covered the period 1 July 1981 to 30 June 1982 and was limited to dead-burned natural magnesite with a MgO content between 85 and 92 %;

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

Whereas it was suggested by some importers that Austria constituted a market more suitable for this purpose; whereas, however, evidence to support this contention was only presented at a relatively late stage of the investigation and 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 investigations in Spain showed that there is production there on a substantial scale and that, given the financial results of the sole 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 and North Korean production has an exceptionally high raw magnesite content, thereby giving these producers an exceptional natural competitive advantage over the Spanish producers; whereas it is difficult for the Commission, at this preliminary stage of the investigation, to establish whether any natural comparative advantages exist in China or North Korea, 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 some exporters and importers have argued that the Spanish product sold on the Spanish market is of a better quality than the Chinese and North Korean products; whereas, in order to enable the Commission to make an allowance for the differences in physical characteristics, the burden of proof lies on the exporters and importers; whereas, in this case, neither exporters nor importers have submitted any evidence to support this claim; whereas, nevertheless, the Commission checked these facts; whereas the Commission found that, if the lower quality would have been sold on the Spanish market, there would be hardly any difference in the sales prices; whereas, furthermore, the Commission found that there is no difference in the cost of production of these two qualities;

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, China Metallurgical Import and Export Corporation and Korea Minerals Export and Import 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, these margins vary according to the exporting country; whereas the average margin as tentatively determined at the present stage of the procedure for the product originating in the People's Republic of China was 114 % and for the product originating in North Korea was 85 %;

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 114 % 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 natural magnesite, dead-burned (sintered), increased from 19 507 tonnes in 1979 to 61 949 tonnes in 1981 and reached 35 656 tonnes during the first half of 1982;

Whereas, with regard to North Korean products the evidence available to the Commission shows that imports into the Community from North Korea of natural magnesite, dead-burned (sintered), were irregular; whereas these imports increased from 46 928 tonnes in 1979 to 55 493 tonnes in 1980 and dropped to 16 299 tonnes in 1981; whereas they increased again to 18 638 tonnes during the first nine months of 1982;

Whereas, in order to establish the market shares of these Chinese or North Korean imports, the Commission calculated the total Community consumption of the product concerned on the basis of the best evidence available, namely the verified figures of EEC sales by Community producers, the evidence submitted by the exporters and importers and the NIMEXE statistics concerning imports from and exports to third countries; whereas, on this basis, the total Community consumption increased from 175 362 tonnes in 1978 to 225 522 tonnes in 1979 and increased further to 258 743 tonnes in 1980 and dropped drastically to 110 934 tonnes in 1981; whereas, on this basis, the combined market share of the imports from China and North Korea has increased from 17 % in 1978 to 70 % in 1981; whereas, even if these figures seem to be distorted especially in 1981, it is nevertheless reasonable to assume that the combined imports from China and North Korea have taken, in any event, an increased market share in a declining market in the Community;

Whereas the average resale prices of the product concerned originating in the People's Republic of China and in North Korea undercut the prices of Community producers during the investigation period by 25 and 19 % respectively; 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 total Community production of the product concerned has dropped from 164 000 tonnes in 1979 to 140 000 tonnes in 1980, to 73 000 tonnes in 1981 and to a level of 48 000 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 54 % in 1979 to 22 % in 1981;

Whereas total sales by Greek producers of the product concerned dropped from 140 000 tonnes in 1979 to 74 000 tonnes in 1981 which represents a decrease of 47 %; whereas the average market share of the product concerned held by Greek producers in the EEC dropped from 64 % in 1978 to 46 % in 1980;

Whereas the losses of the two main Greek producers reached 20 % in 1981; whereas average investments in buildings and machinery by Greek producers of the product concerned dropped by 76 % between 1979 and 1981;

Whereas the number of people employed in Greece for manufacture of the product concerned decreased from 1 465 in 1979 to 1 153 in 1980 and to 749 in 1981;

Whereas the Commission has considered whether injury has been caused by other factors; whereas consumption in the Community has declined by 51 % between 1979 and 1981; whereas, however, it has been established that this decline has affected Community production more than it has affected 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 the dumped imports of dead-burned (sintered) natural magnesite, originating in the People's Republic of China and in North Korea, taken in isolation, have to be considered as constituting material injury to the Community industry concerned;

Whereas Community processing industries as well as end users, in particular the refractory producers and steel industries, have argued that the introduction of protective measures would not be in the Community's interest because it would worsen their already extremely difficult position caused by a structural crisis; whereas the impact of a price increase of the product concerned on the steel industry is limited because the cost of this product on the total production cost of steel can be estimated at a maximum of 1 %; whereas, furthermore, if the Community producers would disappear from the market, the Community would become dependent upon external suppliers of this product; whereas it seems to be in the interest of the 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 interests that action be taken; whereas, in order to prevent further injury being caused during the reminder 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, dead-burned (sintered), with a MgO content between 85 and 92 % originating in the countries under investigation 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 169 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, dead-burned (sintered), with a MgO content between 85 and 92 %, falling within Common Customs Tariff subheading 25.19 ex B and corresponding to NIMEXE code 25.19-51, originating in the People's Republic of China and in North Korea.

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 169 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, equivalent 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 maximum 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