

**COMMISSION REGULATION (EC) No 2997/95
of 20 December 1995**

**imposing a provisional anti-dumping duty on imports of unwrought magnesium
originating in Russia and Ukraine**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community⁽¹⁾, as last amended by Regulation (EC) No 1251/95⁽²⁾, and in particular Article 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽³⁾, as last amended by Regulation (EC) No 552/94⁽⁴⁾ and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas :

I. PROCEDURE

(1) On 15 January 1994, the Commission nounced by a notice published in the *Official Journal of the European Communities*⁽⁵⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of unwrought magnesium originating in Kazakhstan, Russia and Ukraine, and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the Comité de Liaison des Industries de Ferro-Alliages on behalf of a producer in the Community, namely Pechiney Electrometallurgie, France ('PEM').

After the closure of the magnesium production of Societa Italiana per il magnesio e leghe di magnesio SPA ('SAIM'), in Bolzano, Italy, at the beginning of 1992, PEM is allegedly the only producer of unwrought magnesium remaining operational in the Community.

(3) The complaint contained evidence of dumping of the product originating in the countries indicated above, and of material injury resulting therefrom; this evidence was considered sufficient to justify opening a proceeding.

(4) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and the complainants, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

A number of producers in the countries concerned and several importers made their views known in writing. Several parties requested a hearing.

(5) The Commission sent questionnaires to parties known to be concerned and received detailed information from the complaining Community producer, from one Kazakh producer, from two Russian producers, from two Ukrainian producers and from three independent importers located in the Community.

(6) The Commission sought and verified all information it deemed necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

(a) complaining Community producer :

— PEM ;

(b) producer located in the analogue country :

— Hydro Magnesium, Porsgrunn, Norway ;

(c) independent importers in the Community :

— Ayrton & Partners, London, UK,

— Deutsche Erz- und Metall-Union GmbH, Hannover, Germany,

— Sassoon Metals & Chemicals, Brussels, Belgium.

(7) The investigation of dumping covered the period from 1 January 1993 to 31 December 1993 ('the investigation period').

(8) Owing to problems arising in the establishment of normal value based on the situation in an analogue country, the investigation has exceeded the normal time period of one year.

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 1.

⁽²⁾ OJ No L 122, 2. 6. 1995, p. 1.

⁽³⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽⁴⁾ OJ No L 66, 10. 3. 1994, p. 10.

⁽⁵⁾ OJ No C 11, 15. 1. 1994, p. 4.

II. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (9) The product covered by the complaint and the notice of initiation is unwrought magnesium. Unwrought magnesium is marketed in different degrees of purity that is, as alloyed magnesium with an additional content of aluminium and zinc, up to purer forms containing minor quantities of impurities. Unwrought magnesium falls within CN codes 8104 11 00 and 8104 19 00.

- (10) There are two main types of process used in the production of magnesium:

- the thermic process, and
- the electrolytic process.

In both of these processes, a variety of raw materials can be used, e.g. dolomite, carnallite, sea water or a mixture of these in order to produce unwrought magnesium. The differences in the raw material used and in the production process used have no effect on the physical characteristics or uses of the finished products.

Unwrought magnesium is generally sold in ingots. The weight of these ingots can vary from a few hundred grams to hundreds of kilograms.

- (11) Unwrought magnesium is mainly used, in decreasing order of importance, in
- production of aluminium as an alloy element (for such a use unwrought magnesium can be used either in pure or alloyed form),
 - structural applications (for such a use unwrought magnesium can be used either in pure or alloyed form),
 - desulphurization of blast-furnace castings,
 - chemical reduction, or
 - spheroidal casting processes.
- (12) Despite certain differences in composition and physical appearance, the various kinds of unwrought magnesium have the same use, are to a great extent interchangeable and thus compete with each other and cannot be differentiated.
- (13) It has been concluded on the basis of the investigation that all unwrought magnesium produced and exported originating in Kazakhstan, Russia and Ukraine falls, in general, into the category of unwrought magnesium as described above.

It was found that the unwrought magnesium exported to the Community from the exporting countries has basic technical characteristics and uses identical or similar unwrought magnesium produced and sold in the Community and is, therefore, a like product.

- (14) As to whether unwrought magnesium sold on the domestic market forms a like product with the unwrought magnesium exported to the Community from the exporting countries or sold in the Community by the Community industry, the investigation confirmed that the unwrought magnesium sold on the domestic analogue market (see recital 20) constituted a like product with the unwrought magnesium sold by the Community industry. This conclusion was reached despite certain differences in the shape and impurities of the unwrought magnesium sold on the two markets because, overall, the unwrought magnesium was identical or similar in physical characteristics, marketing and use to the unwrought magnesium produced and sold by the Community industry.

- (15) Accordingly, the Commission considers that unwrought magnesium produced and sold in the Community constitutes a 'like product' within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as the Basic Regulation), relative to the product sold in the analogue country and the product exported to the Community from the countries under investigation.

III. DUMPING

A. Kazakhstan

- (16) As far as exports from Kazakhstan are concerned, the Commission has established on the basis of Community Eurostat statistics that imports from that country were made in quantities representing a Community market share of substantially less than 1 %. At the same time, the producer located in Kazakhstan which cooperated in the anti-dumping proceeding has submitted information indicating that it did not sell any unwrought magnesium for export to the Community. Furthermore, the Commission collected information in the framework of the present anti-dumping proceeding indicating that the producer had substantially reduced its production of unwrought magnesium due to the general economic situation prevailing in that country. On this basis, and despite contradictory information concerning export quantities provided by this producer and import statistics, the Commission considers the imports originating in Kazakhstan as *de minimis*. Consequently and in conformity with usual Community practice no dumping calculation was made with regard to imports of magnesium originating in that country.

B. Russia and Ukraine

1. Normal value

- (17) Since neither Russia nor Ukraine are regarded as market economy countries for the purposes of the present anti-dumping proceeding, the normal values to be compared with the respective export

prices were established by the Commission on the basis of the normal value established for an analogue country having a market economy in accordance with Article 2 (5) on the Basic Regulation.

- (18) As an analogue country, the complainant had suggested Japan and had claimed that it was a reasonable choice since the domestic market had a representative size as compared to the exports allegedly being dumped. Furthermore, the complainant claimed that prices and costs on the Japanese markets were the results of normal market forces, as the Japanese market for this product could be considered open to imports and competitive. However, the Commission had requested the complainant to provide additional information on alternative analogue countries, as it was considered that Japan was not comparable to Russia and the Ukraine with respect to the access to raw materials and the technology used for the production of unwrought magnesium and consequently did not appear to be an appropriate choice.
- (19) As alternatives, the notice published upon initiation of the proceeding mentioned Canada and the United States of America.

The Commission requested information from all known producers located in the above alternative analogue countries. Despite it having established contact with one producer located in the USA, the producer ultimately decided not to cooperate in the present proceeding.

One producer located in Canada was willing to cooperate in the proceeding. However, the volume of its domestic sales transactions was not considered representative if compared to the exports from the countries concerned and, furthermore, the production process used by this producer differed considerably from the production process used by the producers located in the exporting countries concerned. Consequently, neither Canada nor the USA could be chosen as appropriate analogue countries.

- (20) Following the initiation of the proceeding, the Commission also considered a fourth producing country, Norway. Although Norway was not explicitly mentioned in the notice of initiation as a possible analogue country, the Commission took the view that on the basis of general industrial information available that country appeared to serve as a further alternative.

The sole known Norwegian producer agreed to cooperate in the present investigation. On the basis of an analysis of the various aspects concerned in the choice of an analogue country, such as comparability of access to raw materials and production technology as well as the size of the domestic sales

operations, the Commission determined that Norway was an appropriate analogue country at the provisional stage.

With regard to the analysis conducted, it should be noted that, worldwide, there is only a limited number of magnesium producers, with the consequence that all producers and their respective production processes and production technologies are known within the industry.

The choice of Norway, as analogue country is supported by the following factors:

- there is a substantial domestic market for the product concerned,
- the volume of this market is representative as compared to the export quantities originating in Russia or the Ukraine, representing substantially more than 5 % of these exports,
- there are significant imports of unwrought magnesium from third countries into Norway with the consequence that there is a competitive environment in this market,
- the producer concerned in Norway is of considerable size and has a high efficient production process at all stages of production and has continuously invested in this production over the years,
- the basic production technology used by the domestic producer is comparable to the one used in Russia and the Ukraine, and
- the situation with respect to access to raw materials in Norway is very similar, if not more advantageous, as compared to the situation in Russia and the Ukraine, in that the main raw material (dolomite and sea water) is sourced in Norway, where there is also a significant supply of electric energy from low-cost sources. The production plant is well located with respect to the transport of both raw material and finished product.

As stated in recital 14 there were minor differences in the shape and impurity-content of the magnesium produced in Norway as compared with the magnesium exported from the exporting countries concerned; nevertheless, in view of the above considerations, the Commission considers it appropriate on balance to take Norway as the analogue country for the two exporting countries concerned in this specific anti-dumping investigation.

- (21) The use of the same analogue country for both exporting countries is justified by the fact that the production plants in Russia and the Ukraine were set up during the existence of the USSR and still operate using the same production technology. This has been confirmed by the information submitted.

- (22) In order to establish the normal value, the Commission first established whether the total domestic sales of unwrought magnesium by the Norwegian producer were representative for the purposes of the exports to the Community from each of the exporting countries.

This assessment revealed that the Norwegian producer had in both cases a domestic sales volume substantially in excess of 5 % of the export sales concerned.

- (23) The Commission further assessed whether this producer's domestic sales overall were made in the ordinary course of trade — that is, if they were made at a profitable level and at arm's-length conditions.

It was established that the producer concerned had not made profitable sales of the product concerned in sufficient quantities during the investigation period on the domestic market.

Consequently, the normal value was constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation, based on the producer's costs incurred in the ordinary course of trade — namely this producer's variable and fixed manufacturing costs, to which an amount for selling, administrative and other general expenses as well as a reasonable profit (was added). The investigation showed, that the company had operated at a substantially reduced production level during the investigation period as a result of a deterioration of market conditions after the exporting countries concerned in the present anti-dumping proceeding had substantially increased their exports to the Norwegian market as well. Therefore, and in order to determine the company's cost of production as incurred in the ordinary course of trade, the Commission adjusted the company's cost of production.

- (24) Since as explained above, the company concerned had no profitable sales in sufficient quantities, being the only magnesium producer operating in Norway, and as no data were available for the same business sector, the Commission had to determine the relevant profit rate on 'any reasonable basis' in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. For the reasons explained in recital 76, the Commission considered that a profit margin of 5 % was appropriate and reflected the profitability requirements in light of the continuing investment needs.

2. Export price

(a) General

- (25) One particular characteristic of the unwrought magnesium trade in general during the investigation period was that the harbour of Rotterdam served as a hub for world trade and, in particular, the Community market. The investigation has shown that a number of purchasers, in particular traders, buy the product from a bonded warehouse in Rotterdam or put the product into bonded ware-

houses there after having purchased it on an FOB-exporting country basis.

Depending on market demand, these purchasers then sell the product to their customers in, and outside, the Community from the bonded warehouse. The producers and exporters of the exporting countries concerned who have cooperated in the present proceeding have stated that on a number of occasions they have sold to customers which were located in or outside the Community without knowing the ultimate destination of the product they sold (see recital 30 to 33).

- (26) Furthermore, it has been alleged by the exporters and producers located in the exporting countries concerned that another peculiarity of the magnesium market during the investigation period consisted in sales of unwrought magnesium coming from strategic stockpiles kept by the authorities in the former USSR. After the dissolution of the USSR and the creation of a number of independent states on its former territory, full central control over the strategic stockpile of unwrought magnesium ceased to exist and part of the stockpiled material was sold for export. It has been further alleged by the same interested parties that sales of such magnesium were made at very low prices as the material was often of inferior quality and as sales frequently occurred through non traditional sales channels. However, sales of this type of magnesium into the Community were marginal because the economic use of such magnesium was very limited in the Community. The individual ingots of the stockpiled material were protected against oxidization with paraffin and wrapping during stockage. Before such material can be used it has to be cleaned, a process which is very labour intensive and costly in the Community. For this reason, none of the cooperating importers had purchased any such material.

- (27) In order to determine the export prices from both Russia and Ukraine, the Commission took account of the arguments put forward in particular by the exporters located in Russia and by the Russian authorities. They claimed that in the present case any adverse effect on the Community market caused by imports of unwrought magnesium coming from the stockpiles should be disregarded by the Commission as such exports were presently again under control.

Furthermore, those parties claimed that any past negative effects of exports of stockpile material should not adversely affect the future prospects of the producers of unwrought magnesium located in Russia which had not participated in such activity. In support of this claim the parties argued that such exports had been made by persons not traditionally operating in the sector.

Although the Commission is not able to assess the reliability of the above statement, in particular because certain claims relate to developments having occurred after the investigation period, an

attempt to assess the particular impact, if any, of exports of unwrought magnesium taken from the strategic stockpiles kept in former USSR has been made. On the basis of Eurostat import statistics, an analysis of the flow of imports into the Community of unwrought magnesium from all countries which are today situated on the territory of the former USSR has shown that imports were made into the Community and declared as originating in countries which, according to information available, do not have any production of the product concerned. The volume of these imports into the Community amounted to around 1 000 tons at an average price of around 1 700 ECU/t. From the same source of information it was determined that the average import prices of magnesium originating in either Russia or Ukraine were substantially higher.

The main exporting countries, accounting for more than 90 % of imports from non-producing countries mentioned above during the investigation period were Estonia, Latvia and Lithuania. This quantity represents about 11 % of total imports into the Community from countries on the territory of the former USSR. There was, however, no indication that the said imports were wholly or substantially made up of stockpile material, as the import volumes concerned were substantial, whereas the use for such material in the Community as mentioned in recital 26 appeared very limited. Given also that by far the greater part of those exports was declared as originating in the three Baltic States through which the Russian producers have, according to the producers' replies, also channeled part of their sales to the Community, it appeared possible that they were exports of newly produced material merely trans-shipped through the non-producing countries.

On the other hand, the information collected during the investigation confirmed that, in general, the stockpiled magnesium attracted a price discount. In that respect the differential between import prices of the non-producing countries mentioned above and the exporting countries concerned by the present anti-dumping proceeding would indicate that material from non-producing countries could be stockpile material.

- (28) The Commission has provisionally concluded that exports declared as originating from non-producing countries should not be taken into account in establishing export prices for the exporting countries concerned. Given the low unit prices for such imports and their unclear origin, it appears possible that the products concerned derive from the stockpile. As has been stated, the level of stockpiled magnesium has been substantially reduced and, as such sales represented only a temporary phenomenon, this approach was considered to be the most reasonable.

(b) Russia

- (29) In order to assess exports of unwrought magnesium originating in Russia, the Commission analysed

information from Eurostat statistics and information supplied by the cooperating Russian producers on exports made to the Community. This analysis revealed a substantial discrepancy between the two sets of information: Eurostat information showed substantially higher import volumes than the exports reported by the Russian producers. The Commission therefore assessed the reasons for such a discrepancy. In particular, the Commission investigated whether exports of magnesium from the strategic stockpile reserves could explain the discrepancy. As it had been established with respect to stockpile material that such magnesium is typically sold at considerably lower prices than newly produced magnesium (see recital 26) and as the Eurostat import statistics contain export prices (around 1 900 ECU/t) close to the prices reported by the cooperating Russian producers, the Commission did not consider it realistic to suppose that the above discrepancy was due to imports of unwrought magnesium from stockpile.

- (30) The Commission further noted that one Russian producer submitted information in the response to the questionnaire indicating that it had sold a substantial quantity of the product concerned to 2 purchasers located outside the Community, such sales accounting for all its exports. While for all these export transactions the related product shipments were made into bonded warehouse in Rotterdam, this producer invoiced the corresponding sales transactions to purchasers located outside the Community. In those circumstances the producer concerned had considered the sales not to have been made for export to the Community and argued that the corresponding sales prices and volumes should not be taken into account in the determination of the export price or in the determination of export volume. From the information available, it can be concluded that both purchasers in question are trading companies which do not process the merchandise themselves but sell it on to other users; the producer declared, however, that he did not know the final destination of the product sold to such companies.

The Commission found, however, that one of the companies concerned (which is located in Switzerland) was related to the Russian producer, so it appears justified to assume that the producer did have knowledge of the ultimate destination of those export sales. As the volume of the sales in question corresponds to the quantity by which the imports shown in the Eurostat statistics exceed the volume of imports declared by the Russian exporters, the Commission treated the sales by the Russian producer to the related company in Switzerland being made for export to the Community.

- (31) In conclusion, the Commission considers it appropriate to determine the export prices and volumes on the basis of all the export transactions reported

by one of the Russian producers and on the basis of the sales transactions reported by the other producer as having been made to its related company located in Switzerland.

(c) Ukraine

(32) One Ukrainian producer argued that:

- it had sold magnesium to purchasers in the Community but claimed that for a substantial part of the sales it had not been known whether the product concerned had actually been imported into the Community; and that,
- it had exported a substantial volume of magnesium to a purchaser located in a country outside the Community, claiming that the sales should not be considered exports to the Community as they were sold for export to a third country and as the producer had no control over the destination of the product concerned.

(33) In order to investigate the 2 claims put forward by this producer, the Commission examined the Eurostat import statistics for magnesium originating in the Ukraine. The import volume of around 3 000 tons during the investigation period was considerably higher than the sales volume which the Ukrainian exporters overall have submitted as being exported to customers for consumption in the Community.

Furthermore, the Commission determined on the basis of the information submitted by the Ukrainian producer concerned regarding its sales to the customer in a third country mentioned above, that although the goods had been invoiced to a third-country company, the actual shipment of the goods was made by the Ukrainian producer to end-user customers located in the Community. This indicated clearly that the Ukrainian producer was aware of the destination of the product concerned. From the information submitted by importers which cooperated in the framework of the investigation it was possible to confirm the above findings.

From the above, the Commission concluded that although the Ukrainian producer concerned sold substantial quantities of magnesium via a third country company, it had been fully aware at the time of sale that the sales were destined for export to the Community.

The same conclusions apply to this producer's sales to customers located in the Community for which it was claimed that the producer did not know the final destination of the product.

In these circumstances, the Commission determined the export volume and prices of this Ukrainian producer by considering all sales transactions

for which the shipping address was a customer located in the Community as export sales to the Community. In this way the discrepancy between the data submitted by the Ukrainian producers and Eurostat figures became negligible, indicating that the approach taken reflects the actual export transactions for unwrought magnesium originating in Ukraine to the Community.

(d) Methodology

(34) As all exports were made to independent importers in the EC, export prices were determined on the basis of the prices actually paid or payable as reported by the cooperating producers located in the exporting countries. Where possible, those export prices were cross-checked with information received from cooperating importers.

3. Comparison

(35) A number of producers in the exporting countries claimed that the normal value established on the basis of a situation prevailing in an analogue country should be adjusted to take into account natural comparative advantages prevailing in the exporting countries in accordance with consistent Community practice.

While such claims have been granted in appropriate cases, it is clear that such natural comparative advantages cannot include advantages either in costs or prices by the non-market economy country companies. Indeed, in the framework of the present anti-dumping proceeding neither Russia nor Ukraine are considered to be market economy countries because neither domestic prices nor costs can form a reliable basis for the determination of the normal value given the structure of the respective domestic markets.

(36) On this basis a number of claims put forward by the exporters concerned cannot be accepted, as such claims relate to certain cost advantages, in particular with respect to

- production labour costs,
- depreciation costs,
- environmental costs,
- selling expenses, and
- raw material cost.

(37) As far as specific natural comparative advantages are concerned the producers have claimed that they benefit from advantages in:

- access to raw materials,
- energy efficiency of the production process, and
- their level of support staff working in the companies concerned.

As a general comment on the above claims it should be noted that the producers concerned have put forward a number of claims without supplying the necessary detailed quantitative information in support of them. Two companies in particular have declined to disclose the exact level of their production on the grounds that this information was secret. Without such information however, the Commission considers it impossible to assess any advantages stemming from the size of the production. Furthermore, two producers submitted information relating to a period which did not coincide with the investigative period.

- (38) Nevertheless, the Commission has analysed the situation of the producers located in the exporting countries taking into account also information compiled by industry analysts that is publicly available. This analysis led to the following conclusions :

- Unlike the Community producer, which produces magnesium using the thermic production process, which the producers in the exporting countries have claimed to be energy inefficient, the producer in the analogue country uses an electrolytic production process. The same production process is used by the producers in the exporting countries. Thus, cost advantages stemming from this production process are automatically taken into account for the benefit of the exporters concerned.
- Whereas the producers in the exporting countries use carnalite as their main feed stock for magnesium production, the analogue country producer uses dolomite and sea water. As far as the production process is concerned, on the basis of the technical information submitted during the present investigation, there is no clear efficiency advantage in the use of either as a raw material. As far as access to the raw material is concerned, the analogue country producer is supplied in dolomite from an open-cast mine located in the analogue country. The other source of feed stock, sea water, is readily available for the producer concerned as its production plant is on the sea shore. Any disadvantage in the use of dolomite is offset by the particularly easy access to sea water.
- As regards the energy efficiency of the production process in the analogue country as compared to the exporting countries, the Commission established, on the basis of the information submitted by the analogue country producer and by the producers in the exporting countries, that there was no disadvantage to the analogue country producer. On the contrary, it appeared that this producer operated a highly energy-efficient production process. It has to be recalled in this context that the analogue country producer uses the same basic produc-

tion technology as the producers in the exporting country, namely the electrolytic process which is considered more energy efficient than the alternative basic process.

- (39) In conclusion, the Commission finds that the various claims put forward by the producers in the exporting countries concerning specific natural comparative advantages have not been substantiated. Therefore, the Commission does not consider it justified to make any adjustment in determining the normal values concerned.
- (40) The export prices as established above were adjusted by taking into consideration the actual transport, insurance, handling, loading and ancillary costs in accordance with Article 2 (9) and (10) of the Basic Regulation in order to establish the export prices at the ex-country frontier level, that is, at the same level as the normal value.

Certain exporting producers claimed that they did not make their export sales at the same level of trade as the analogue country producer made its domestic sales. The exporting producers claimed in particular that they made their sales to unrelated traders located in the Community whereas the analogue country producer sold its unwrought magnesium to end users.

Any differences have been taken into account in accordance with Article 2 (9) and (10) in constructing the normal value for the analogue country producer at distributor level.

4. *Dumping margin*

- (41) The comparison between export price and normal value revealed that the ex-factory prices of all export transactions for the producers were below normal value, dumping being equal to the amounts by which the normal value exceeded the export price. Those amounts were aggregated for all export transactions and the total dumping, expressed as a percentage of the total cif EC border value, is as follows :

- 1. Russia : 55 %
- 2. Ukraine : 64 %.

IV. INJURY

A. Volume of the Community market

- (42) According to the information supplied in the case of the present anti-dumping proceeding concerning sales of unwrought magnesium on the Community market and import statistics, total Community consumption of unwrought magnesium measured in metric tons shows the following pattern over 4 years :

1990	1991	1992	1993
54 000	48 000	52 000	46 000

B. Cumulation of the imports originating in the countries concerned

- (43) Following the consistent practice of the Community institutions, the Commission examined whether the effect of the imports of unwrought magnesium from the two countries concerned with regard to the Community industry should be analysed cumulatively according to the following criteria :

- absolute and relative level of imports from the exporting countries concerned during the investigation period
- comparability of the products imported in terms of physical characteristics and interchangeability of end use, and
- similarity of market behaviour.

- (44) As far as imports from the two exporting countries in the investigation period are concerned, for each country individually these were made in non-negligible quantities relative to the size of the Community market, as imports from Russia and Ukraine reached a market share of around 13 % and 7 % respectively.

Furthermore, the investigation revealed that the prices of the imports originating in the two countries were at a low level when compared to those of the Community industry.

Finally, the investigation confirmed that the unwrought magnesium originating in the countries concerned is a like product when compared to the unwrought magnesium sold by the Community industry, as established in recital 14.

- (45) Therefore, the Commission considers that, in accordance with the normal practice of the Community institutions, the imports concerned should be cumulated.

C. Volume and Community market shares of the dumped imports

- (46) Based on the assessment made in recitals 26 and 33 concerning the various import channels, the volume of dumped imports of unwrought magnesium originating in Russia and Ukraine into the Community, measured in metric tons show a significant increase from around 2 000 metric tons in 1991 to around 6 000 metric tons in 1992; ultimately rising to around 9 000 metric tons in the investigation period, an increase of 50 % since 1992 alone.

On the basis of the total apparent Community consumption, this development corresponds to a rise in market share held by dumped imports from 4 % in 1991 to 11 % in 1992 and to 20 % in the investigation period.

- (47) The Commission considers the increase in total sales volumes and market share with such a short time to be an important element in the evaluation of the impact of these imports on the Community magnesium industry.

D. Prices of the dumped imports

- (48) The prices of unwrought magnesium imported from Russia and Ukraine were at a consistently low level and undercut those of the Community industry by a substantial margin. A detailed evaluation of the export prices charged during the period of investigation as compared to prices charged by the Community producer at a comparable level of trade, and taking into account, where appropriate, differences in the quality of the products, revealed that the undercutting margins were between 30 % and 40 %. Such a comparison was done on the basis of detailed transaction-by-transaction sales reports by the Russian and Ukrainian exporters and producers and the Community producer.

An assessment of the price development over a longer time span, from 1990 to 1993, was not possible on the basis of the data provided by the exporters concerned. An estimate made on the basis of data from EUROSTAT import statistics for 1990 and 1991 (using information relating to the USSR) and on the data provided by the exporters concerned for 1992 and 1993 showed the following trend for export prices in ECU per metric ton of unwrought magnesium, taking the 1990 price as a baseline :

1990	1991	1992	1993
100	95	94	91

E. Situation of the Community industry

- (49) The total yearly output of the Community producer has dropped continuously since 1990, showing a particularly strong decrease from 1992 to the investigation period of 25,1 %, from 74 % to 56 % of the 1990 level.
- (50) Furthermore, in line with production, the yearly sales volume of the Community producers to unrelated customers in the Community has also decreased since 1990. For the period from 1991 to 1992 the decrease was 41,7 % and from 1992 to the investigation period 36,9 %, from 50 to 32 between 1992 and the investigation period on an indexed basis (base : 1990 = 100).

(51) Even though production decreased substantially, the sales of the Community industry were even lower, with the result that the value of the Community industry's stocks rose from 1991 to 1992 by 129,1 % and a further 1,2 % to the investigation period.

(52) The decrease in sales volume resulted in a fall in market share of the Community producer from 17 % in 1991 to 9 % in 1992 and ultimately to 7 % in the investigation period.

(53) Due to the closure of the production facilities of one company located in the Community, the total production capacity of the Community industry was substantially reduced during the period from 1990 to 1993, by around 30 %.

Despite this reduction, the capacity utilization of the sole remaining Community producer decreased.

(54) The closure of one Community producer and the cuts in production made by the other Community producer in the face of the substantial increases in imports have resulted in a substantial loss of employment. Indeed, between 1990 and 1993, the employment level in the industry more than halved.

(55) The prices of the Community industry measured in index form have evolved in the following way since 1990 :

1990	1991	1992	1993
100	76	78	94

The above development of prices shows the attempt by the Community industry to reduce its financial losses after prices substantially decreased in 1991 and 1992 as compared with 1990. The price increase in 1993 led, however, to a further reduction in sales.

(56) The substantially reduced production and sales volume, the decrease in capacity utilization and the increase in the volume of product held in stock led to significant losses by the Community producers throughout the period from 1990 to the investigation period despite its efforts to reduce costs by a substantial reduction in employment, despite its attempt to improve its situation by increasing prices from 1992 to 1993 and despite certain technical adjustments made in order to improve the efficiency of the production process. This negative development in profitability has now reached a stage where the overall viability of the remaining producer is in danger.

That being so, it is concluded that the Community industry has been suffering material injury within

the meaning of Article 4(1) of the Basic Regulation.

V. CAUSATION OF INJURY

A. Effect of the dumped imports

(57) The rapid increase of dumped imports of unwrought magnesium originating in Russia and the Ukraine over a short time at prices which undercut those Community producers' prices substantially, coincides with the deterioration of the situation of the Community industry, in particular through the decrease of its market share and the depression of Community magnesium market prices between 1991 and the investigation period.

(58) Since magnesium is a commodity, its market is price sensitive and, consequently, price undercutting by certain vendors has generally, depressing effect on the market. When faced with low priced imports originating in the exporting countries concerned, the Community industry had the choice of maintaining its prices and losing sales, or of following the low prices of dumped imports regardless of the consequences for its profitability. The price trend of the Community industry in recital 55 shows that the industry did attempt to follow prices down in the years 1991 and 1992, resulting in a considerable loss of revenue. During the investigation period, the Community industry raised its prices in an attempt to improve its financial situation after it had carried out a restructuring programme but continued to incur heavy losses as a consequence of a drop in sales volume. It appears noteworthy that the sales prices of the Community industry during the investigation period for its sales to customers outside the Community were considerably higher. This price differential indicates that market prices in the Community were particularly depressed.

(59) The Russian producers have argued that no injury could have been caused to the Community industry by their sales to the Community as the Community industry sold to different segments of the magnesium market and consequently direct competition between the Community industry and the Russian producers was very limited.

(60) In this context the Commission notes that there are distinct uses of magnesium as outlined in recital 11. However, as concluded in this recital, unwrought magnesium used in its various applications cannot be distinguished.

Furthermore, the investigation has shown that the magnesium exported by the producers located in Russia and the Ukraine is of standard quality and is sold by the importers to clients operating in the same industry sectors as those of the Community industry.

(61) In particular the Russian exporters have argued that the complainant company, PEM, as part of a group of companies, supplies unwrought magnesium to other members of the group, with the consequence that for these sales it is insulated from competition due to imports from the two exporting countries concerned.

(62) With regard to this argument, it should be noted that all assessments of sales made in the present investigation relate to the situation in the Community industry with respect to its sales to unrelated customers. Given the extent of injury suffered by the Community industry in its sales to unrelated customers alone, which accounted for about half its sales, it was not deemed necessary to address the question whether or not sales transactions with companies belonging to the group were at arm's length.

(63) In any event it should be emphasized that, the market for unwrought magnesium being highly transparent, the impact of imports representing a considerable market share made at low prices undercutting those of the Community industry by a significant margin must be substantial on prices obtained in the market as a whole.

B. Other factors

(64) The Commission considered whether factors other than the dumped imports concerned, namely imports from other countries, the behaviour of the Community industry itself, the development of the Community market concerned or any other factors could have caused the injury suffered by the Community industry.

(65) As was stated in recital 42, the Community market for unwrought magnesium was characterized by volatility caused by a general downturn in the demand resulting in the overall contraction of the market.

While this general contraction in demand could be expected to have an influence on the Community industry's actual production and sales volume, the negative development of the Community industry's market share in particular shows a trend that cannot be explained by a mere contraction in demand. As far as price movements are concerned, the price disparity outline in recital 58 indicates that the price depression in the Community market was particularly strong.

(66) The producers located in Russia have argued that the injurious situation of the Community industry was entirely due to a cyclical downturn in the magnesium market. These exporters concluded that the injury cannot have been caused by exports originating in Russia.

(67) In this context, the Commission notes that while such downturn certainly contributed to the difficulties experienced by the Community industry, the difficulties were greatly exacerbated by the effects the dumped imports had on the Community magnesium market.

(68) Imports of unwrought magnesium from countries producing magnesium other than in Russia and Ukraine have entered the Community in the period from 1990 to the investigation period. The development of these imports, measured in metric tons by country, is summarized in the table below:

	1990	1991	1992	1993
Brazil	4	10	48	0
Canada	844	604	1 137	1 502
China	10	0	159	204
India	0	0	0	0
Israel	0	16	247	0
Norway	18 375	16 266	17 919	11 503
USA	13 082	7 332	8 953	7 180
(ex) Yugoslavia	3 526	3 126	2 765	366

These imports represent the following market shares :

	1990	1991	1992	1993
Brazil	0,0 %	0,0 %	0,1 %	0,0 %
Canada	1,6 %	1,3 %	2,2 %	3,2 %
China	0,0 %	0,0 %	0,3 %	0,4 %
India	0,0 %	0,0 %	0,0 %	0,0 %
Israel	0,0 %	0,0 %	0,5 %	0,0 %
Norway	34,3 %	34,2 %	34,3 %	24,9 %
USA	24,4 %	15,4 %	17,1 %	15,5 %
(ex) Yugoslavia	6,6 %	6,6 %	5,3 %	0,8 %

The figures show that overall imports from other countries have decreased, with the result that the market share held by other imports has also decreased overall. This also applies to individual countries with the exception of imports originating in Canada. However, import statistics show that the increase in Canadian imports is far less pronounced than that of imports originating in Russia and the Ukraine, while the market share reached by Canada is relatively moderate and its import prices are substantially higher than those of the exporters under investigation. Finally, no indications were available to the Commission to suggest that imports originating in Canada were made at dumped prices.

Therefore, the Commission concluded that imports from other countries could not be the cause for the injury sustained by the Community industry.

C. Conclusion

- (69) The Commission has come to the conclusion that high volume, low-priced dumped imports of unwrought magnesium originating in Russia and the Ukraine, taken in isolation, have caused material injury to the Community industry. At the same time it has also been established that the Community industry has faced negative trends, owing to a downturn in the market for unwrought magnesium, triggered by a general downturn in the magnesium-using industries. However, the Commission notes that this does not alter the conclusion that dumped imports from the exporting countries have caused material injury to the Community industry.

VI. COMMUNITY INTEREST

- (70) The purpose of anti-dumping measures is to remedy an unfair trading practice which has an

injurious effect on a Community industry. Such a remedy should result in the re-establishment of effective competition which, as such, is in the interest of the Community.

- (71) In the framework of the investigation it has been established that the Community industry is facing an injurious situation in the form of loss of sales and market share, decrease in production and a reduction in employment, which together have led to substantial financial losses. Without remedial action, the viability of the Community industry would be threatened, a consequence which has already been foreshadowed by termination of the production of one Community producer.
- (72) The Russian producers have argued that the production capacity of the remaining Community producer was insufficient to supply the Community market and that therefore imports are necessary to satisfy the demand for unwrought magnesium in the Community.

Furthermore, the Russian exporters and Russian government representatives have claimed that the imposition of anti-dumping measures in the present proceeding would not be in the interest of the Community because it would reduce the competition on the Community market, in which only one producer is operating presently. Those interested Russian parties have claimed that such a situation was particularly likely to occur in the present market situation which after a downturn in the period of 1991 to the investigation period, is characterized by strong demand, while a number of producers worldwide have either already closed production or plan to do so, with the consequence of widening the shortfall between worldwide demand and supply of unwrought magnesium.

- (73) With respect to the competitive situation in the Community market, the Commission considered whether the adoption of anti-dumping measures might lead to a situation in which effective competition might be significantly reduced. First of all, it appears unjustified to conclude that the imposition of anti-dumping measures would have the consequence of eliminating Russian and Ukrainian exporters from the Community market: other exporters who are not dumping are present on the market. Furthermore, the magnesium market of the Community has traditionally been supplied to a considerable extent by imports from third countries, notably from Norway and the USA. During the period starting at the beginning of 1991 up to the end of the investigation period a shift has occurred between exporting countries towards imports originating in the two exporting countries covered by the present investigation.

It can reasonably be assumed that the imposition of anti-dumping measures restoring fair trade conditions will not lead to a situation of reduced competition by allowing the Community industry to increase its market position unduly. It can, on the contrary, be expected that traditional suppliers located in exporting countries other than those subject to the present anti-dumping proceeding may start again or increase their exports to the Community market. While indeed production was cut in Japan, in the former Yugoslavia, in the Community and in the USA, a producer in Canada has started substantial production in recent years and it is planned to put into operation an entirely new production plant in Israel in 1996. Consequently, the Commission came to the conclusion that it does not appear to be realistic to foresee acute supply shortages in the market for unwrought magnesium nor in a reduction in the number of competitors. This conclusion is underlined by the fact that the main customer of the suppliers of unwrought magnesium industry, an industry made up of companies with a considerable negotiating power that can match that of the producers of unwrought magnesium.

- (74) As far as the users of unwrought magnesium are concerned, none of them has submitted information to the Commission relating to the effect of anti-dumping measures on their situation. Nevertheless, it can be assumed that they may have benefited in the short term from the low prices of dumped imports. However, it must also be borne in mind that unwrought magnesium in its main applications, namely as an alloy element in aluminium production and in the desulphurization of blast-furnace castings, accounts only for a relatively small percentage of total production costs, which points to the conclusion that the effect, if any, of imposing anti-dumping measures in this proceeding on the users will be very limited.
- On balance, the Commission does not consider therefore that the possible limited gain of the users, if the current situation is maintained, is sufficient to deny the Community industry protection against unfairly priced imports of unwrought magnesium.
- (75) In conclusion, the Commission has established that it is in the interest of the Community to ensure the continued viability of the sole Community producer and consequently to impose anti-dumping measures.
- #### VII. PROVISIONAL DUTY
- (76) On the basis of the conclusions on dumping, injury, causation and Community interest set out above, the Commission considered the form and level anti-dumping measures should take in order to restore effective conditions of competition on the Community's unwrought magnesium market.
- Accordingly, the level of prices was calculated at which the Community industry would be able to cover its costs and to obtain a reasonable return. In determining the cost of production, the Commission excluded certain costs incurred by the Community producer as a result of its restructuring efforts. This approach was considered reasonable as it ensured that costs not likely to recur in the future were not included in the target price. The Commission was satisfied that the Community producer, for its internal business and profitably projections left such extraordinary cost items out of account. With respect to a reasonable level for profit, the Commission used a rate of 5 % on turnover, a rate considered by the Community industry to be a strict minimum necessary to ensure the continuation of its operations. The Commission considers that this target profit is sufficient given the mature nature of the product requiring only modest investment in research and development as well as production equipment.
- (77) On this basis, and taking account of the Community industry's cost of production, a minimum import price was calculated which would permit the Community industry to raise its prices to a profitable level. Since it was established that the resulting injury elimination margin is higher than the dumping of both exporting countries concerned, the level of the duty should be limited to the dumping margin in accordance with Article 13 (3) of the Basic Regulation.

Given the material injury suffered by the Community industry, the homogeneous nature of the product and the possible price fluctuations resulting from demand for downstream products, a variable duty is considered the most appropriate in this case. This will enable the Russian and Ukrainian exporters to maximize their returns while at the same time ensuring that injurious dumping would be eliminated.

In these circumstances, the Commission has decided to improve a variable duty based on a minimum price of ECU 2 735 and ECU 2 701 per ton at a cif Community border level for imports of unwrought magnesium originating in Russia and the Ukraine respectively.

- (78) In the interests of sound administration, a period should be fixed which the parties concerned may make their views known and request a hearing. Furthermore, it should be noted that all findings made for the purpose of this Regulation are provisional and may be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of unwrought magnesium falling within CN codes 8104 11 00 and 8104 19 00 and originating in Russia and the Ukraine.

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

Done at Brussels, 20 December 1995.

2. For the product referred to in paragraph 1 originating in Russia, the amount of anti-dumping duty shall be the difference between the minimum import price of ECU 2 735 per metric tonne of product and the cif Community frontier price in all cases where the cif Community frontier price per metric ton of product is less than the minimum import price.

3. For the product referred to in paragraph 1 originating in the Ukraine, the amount of anti-dumping duty shall be the difference between the minimum import price of ECU 2 701 per metric ton of product and the cif Community frontier price in all cases where the cif Community frontier price per metric ton product is less than the minimum import price.

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

5. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the 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 2423/88, the parties concerned may make known their views in writing and apply to be heard orally within one month of the date of the entry into force of this Regulation.

Article 3

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

For the Commission

Leon BRITTAN

Vice-President
