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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 778/2005

of 23 May 2005

imposing a definitive anti-dumping duty on imports of magnesium oxide originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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 Community [1] (the basic Regulation), and in particular Article 11(2) thereof,

Having regard to the proposal submitted by the Commission, after consulting the Advisory Committee,

Whereas:

A. MEASURES IN FORCE

(1) Following an expiry review, the Council imposed by Regulation (EC) No 1334/1999 [2] definitive anti-dumping measures on imports of magnesium oxide (product concerned) originating in the People's Republic of China (the PRC). These measures took the form of a minimum import price. Following an interim review, by Regulation (EC) No 985/2003 [3], the Council amended the form of the anti-dumping measures in force by maintaining the minimum price but subject to specific conditions and imposing an ad valorem duty of 27,1 % in all other cases.

(2) It should be noted that the original measures were imposed by Council Regulation (EC) No 1473/93 [4] (original investigation).

B. PRESENT INVESTIGATION

(3) Following the publication of a notice of the impending expiry of the anti-dumping measures in force on imports of magnesium oxide originating in the PRC [5], the Commission's services received a request for an expiry review pursuant to Article 11(2) of the basic Regulation. The request was lodged on 9 March 2004 by Eurométaux (the applicant) on behalf of producers representing a major proportion, in this case, 96 % of the total Community production of magnesium oxide. The request alleged that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission's services announced the initiation of an expiry review [6], pursuant to Article 11(2) of the basic Regulation and commenced an investigation.

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[1] 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).
[2] OJ L 159, 25.6.1999, p. 1. Regulation as amended by Regulation (EC) No 985/2003 (OJ L 143, 11.6.2003, p. 1).
[3] OJ L 143, 11.6.2003, p. 1.
[4] OJ L 145, 17.6.1993, p. 1.
[5] OJ C 230, 26.9.2003, p. 2.
[6] OJ C 138, 18.5.2004, p. 2.

(5) The Commission's services officially advised the applicant Community producers, the other Community producer supporting the complaint, the exporting producers in the PRC, importers/traders, user industries known to be concerned, as well as the representatives of the Chinese Government of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(6) The Commission's services sent questionnaires to all parties known to be concerned and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(7) In view of the apparent high number of exporting producers in the PRC and importers of the product concerned, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to be able to decide whether sampling would be necessary and, if so, to select a sample, the Commission's services sent out sampling questionnaires asking specific information on average sales volume and prices of each exporting producer and importer concerned. No reply was received from any exporting producer or importer. Therefore, it was decided that sampling was not necessary.

(8) In addition, questionnaires were sent to all the producers in the United States of America (USA), Australia and India (potential analogue countries), which were known to the Commission's services.

(9) Replies to the questionnaire were received from the four applicant Community producers and one producer in the analogue country, namely the USA.

(10) The Commission's services sought and verified all the information deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Community interest. Verification visits were carried out at the premises of the following companies:

Community producers

— Grecian Magnesite S.A., Athens, Greece

— Magnesitas Navarras, S.A., Pamplona, Spain

— Magnesitas de Rubian, S.A., Sarria (Lugo), Spain

— Styromag GmbH, St Katharein an der Laming, Austria

Producer in the analogue country

— Premier Chemicals, LLC, King of Prussia, Pennsylvania, USA

(11) The investigation regarding the likelihood of a continuation or recurrence of dumping and injury covered the period from 1 April 2003 to 31 March 2004 (the IP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2000 up to the end of the IP (the period considered).

C. **PRODUCT CONCERNED AND LIKE PRODUCT**

(12) The product concerned is the same as that in the previous investigations which led to the imposition of measures currently in force, i.e. magnesium oxide, namely natural caustic calcined magnesite, falling within CN code ex 2519 90 90 (Taric code 2519 90 90*10).

(13) Magnesium oxide is processed from naturally occurring magnesium carbonate or magnesite. In order to produce magnesium oxide, magnesite has to be mined, crushed, sorted and then burned in a kiln at temperatures of 700 to 1 000 °C. The result is magnesium oxide with various magnesium oxide contents or grades. The main impurities in magnesium oxide are SiO_2, Fe_2O_3, Al_2O_3, CaO and B_2O_3 (silicon oxide, iron oxide, aluminium oxide, calcium oxide and boron oxide respectively). Magnesium oxide is mainly used in agriculture for animal feeding or as a fertiliser and for industrial applications in the construction industry for flooring and insulating boards as well as in the pulp, paper, chemicals, pharmaceuticals, flame retardants, abrasives producing industries and environmental protection.

(14) As established in the previous investigations, this review investigation has confirmed that the products exported by the PRC and those manufactured and sold by the Community producers on the Community market and by the producer in the analogue country on the domestic market of the analogue country have the same basic physical and chemical characteristics and end uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

D. **LIKELIHOOD OF A CONTINUATION OF DUMPING**

(15) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the measures would be likely to lead to a continuation of dumping.

Preliminary remarks

(16) In the absence of cooperation either from any of the Chinese exporting producers or from any importer in the Community, this examination had to be based on information available to the Commission's services from other sources. In this respect and in accordance with the provisions of Article 18 of the basic Regulation, Eurostat data with 8-digit CN code and 10-digit Taric code, checked with other sources, were used.

(17) It is noted that the relevant Eurostat data with 8-digit CN code includes other products than the product concerned, while the data for the period considered with 10-digit Taric code did not include the 10 acceding countries.

(18) Therefore, Eurostat data with 10-digit Taric code was used for the 15 Member States which composed the European Union before enlargement, while Eurostat data with 8-digit CN code was used for the 10 new Member States. In addition, Eurostat data with 8-digit CN code used for the ten new Member Sates was adjusted by deducting the percentage difference existing between the data with 8-digit CN code and 10-digit Taric code reported by the 10 new Member States in the six month period after enlargement in order to exclude products other than the product concerned.

(19) Based on the adjusted Taric data, it was found that during the IP 115 225 tonnes of magnesium oxide were imported from the PRC into the Community, i.e. approximately 29 % of the Community consumption.

(20) During the IP of the previous expiry review, the import volume of Chinese magnesium oxide into the Community amounted to 110 592 tonnes, i.e. approximately 31 % of Community consumption.

(21) It should be noted that, as the Community expanded to the 25 Member States, export volumes and export market shares of the previous and the current expiry reviews cannot be compared.

Dumping during the IP

(22) In accordance with Article 11(9) of the basic Regulation, the Commission's services used the same methodology as in the original investigation. It is recalled that in the original investigation, a dumping margin of 27,1 % was established.

Analogue country

(23) Since the PRC is an economy in transition, normal value had to be based on information obtained in an appropriate third-country market economy in accordance with Article 2(7) of the basic Regulation.

(24) Since in the previous expiry review India was selected as an analogue country for the purposes of establishing normal value, a request for cooperation was sent to Indian producers. Furthermore, a request for cooperation was also addressed to all known producers in Australia and the USA, which had been suggested as possible analogue countries in the request for the expiry review.

(25) One Indian producer agreed to cooperate, but did not reply to the questionnaire. One Australian producer replied but declared itself not to be in the position to assist the Commission's services with the requested information. Only one USA producer agreed to provide the information requested.

(26) With respect to the USA, it was found that competition is sufficiently strong in the US market. Indeed, there are no anti-dumping duties imposed on imports of magnesium oxide, considerable volumes of the product concerned are imported from different third countries and there are two competing local producers. The production process of the cooperating USA producer is similar to that of the Chinese producers. The domestic sales of the USA producer represent a significant amount (around 83 %) of the total Community imports from the PRC during the IP.

(27) It is therefore concluded that the USA constituted an appropriate analogue country for the purpose of establishing normal value.

Normal value

(28) In accordance with Article 2(4) of the basic Regulation, it was considered whether domestic sales of the producer in the USA could, in view of the prices charged, be seen to be made in the ordinary course of trade. For this purpose, the full cost of production per unit during the IP was compared to the average unit price of the sales transactions made during the same period. It was found that all sales were made at a profit. The investigation also revealed that all sales of the cooperating producer in the USA were made to independent customers. As a result, the prices paid or payable by independent customers on the USA domestic market in the ordinary course of trade were used to determine the normal value in accordance with Article 2(1) of the basic Regulation.

Export price

(29) As already mentioned, in the absence of any other more reliable information, the export price was based on the Eurostat data. It was found that data on prices in Eurostat are recorded on a CIF European Community frontier basis. These prices were brought to a FOB basis by deducting ocean freight and insurance cost. The necessary information on these costs has been submitted by the Community industry and used in the calculations, in the absence of any other more reliable information.

Comparison

(30) For the purposes of ensuring a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. In this regard, adjustments were made in respect of ocean and inland freight.

Dumping margin

(31) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices, as determined above. This comparison showed the existence of dumping. The dumping margin, expressed as a percentage of the CIF Community frontier price, duty unpaid, was 100,73 %, which is well above the level found in the previous investigation (41,9 %).

Likelihood of continuation of dumping

(32) Further to the analysis of the existence of dumping during the IP, the likelihood of the continuation of dumping was also examined. In the absence of cooperation from exporting producers and given that little public information is available about the Chinese magnesium oxide industry, the conclusions below rely mainly on facts available, namely the market research information based on Japan Trade Statistics, the US bureau of the Census and China customs data submitted by the complainant.

Chinese production capacity

(33) According to the expiry review request, Chinese producers have substantial spare production capacity as they have the largest magnesite ore resource in the world, estimated at 1 300 000 tonnes. The total Chinese production capacity for the product concerned is estimated at between 800 000 and 1 000 000 tonnes per year, whereas the Chinese domestic consumption is estimated at some 250 000 tonnes and exports of around 550 000 tonnes per year. Therefore, the Chinese production could be rapidly increased further if warranted by market conditions.

Exports to third countries

(34) On the basis of the same source, it was established that total worldwide exports of Chinese magnesium oxide increased by 17 %, from 465 900 tonnes in 1999 to 545 600 tonnes in 2003. Export prices to other world markets such as Japan or the USA are around 38 % below those to the Community, so exporters would have an incentive to increase exports to the Community rather than to third countries should the existing measures be repealed.

(35) Moreover, in 2003, prices of Chinese exports to Japan fell by approximately 13 %, i.e. from USD 109,4 per tonne in 2000 to USD 95 per tonne in 2003. Also prices to the USA fell by approximately 8 % in the same period, i.e. from USD 133 per tonne in 2000 to USD 122 per tonne in 2003.

(36) This clearly shows that, if the measures were repealed, the Chinese exporters would have an incentive to target the Community market in the light of their substantial spare production capacity and of the higher price level in the Community compared to third countries.

Export prices to the Community

(37) It should also be noted that the generally prevailing price level for the product concerned in the Community makes the Community market a very attractive one. This is a further incentive for increasing exports to the Community by increasing production. Moreover, as said above, export prices to third countries were found to be lower than those to the Community. However, the attractive and relatively high prices on the Community market are not likely to be maintained in the long term. If measures were lifted, the numerous Chinese exporters would be specifically interested in the Community market in order to increase their shares. Such an increased competition, however, might lead to lower prices. Consequently, it is very likely that all operators present on the Community market would have to reduce their prices accordingly.

Conclusion

(38) The investigation shows that the PRC has continued its dumping practices during the IP at a far higher level than previously. Given the fact that the PRC has considerable spare production capacity and that Chinese exports to third countries are made at even lower prices than those to the Community, there is a strong likelihood that Chinese exporting producers would substantially increase their dumped exports of the product concerned to the Community if existing measures were repealed.

E. **DEFINITION OF THE COMMUNITY INDUSTRY**

(39) The four complainant Community producers replied to the questionnaires and fully cooperated in the investigation. During the IP, they represented 96 % of the Community production.

(40) On this basis, the four complainant Community producers constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

F. **SITUATION OF THE COMMUNITY MARKET**

Community consumption

(41) Community consumption was based on the combined volume of sales made by the Community industry in the Community, imports from the PRC and imports from other third countries.

Table 1 — Community consumption (sales volumes)

Community consumption	2000	2001	2002	2003	IP	IP/2000
Tonnes	423 791	448 234	456 197	398 038	392 416	
Index	100	106	108	94	93	– 7
Y/Y trend %		6	2	– 14	– 1	

Source: Eurostat data.

(42) EU consumption of magnesium oxide increased between 2000 and 2002 and peaked in the year 2002 at around 456 197 tonnes before falling back again in 2003 and the IP to end at 392 416 tonnes. In total there was a 7 % decrease over the whole period considered, but a 6 % increase between 2000 and 2001.

(43) A fluctuation in the consumption of the product concerned reaching 10 % positive or negative year-to-year change is not indicative of a long term trend. The Community industry maintains that the overall magnesium oxide market is relatively steady and this slight fluctuation is within the normal range of consumption over the long term.

Imports from the PRC

Volume, market share and prices

(44) Volumes imported from the PRC followed the same trend as Community consumption. They increased by on average 8 % until 2002, and started to decrease afterwards. Overall, during the period considered imports from the PRC decreased by 18 %, from 140 171 tonnes to 115 225 tonnes.

Table 2 — Imports from the PRC

Import volumes from the PRC	2000	2001	2002	2003	IP	IP/2000
Tonnes	140 171	150 403	163 116	126 387	115 225	
Index	100	107	116	90	82	– 18
Y/Y trend		7	9	– 26	– 8	

Source: Eurostat data.

(45) The market share of the Chinese imports increased to 36 % in 2002 in line with the increase in the Community consumption. Since 2003 it started to decrease slightly, still reaching 29 % during the IP.

Table 3 — Market share of Chinese imports

Market share of Chinese imports	2000	2001	2002	2003	IP	IP/2000
Percentage of market	33	34	36	32	29	
Index	100	103	109	97	88	– 12

Source: Eurostat data.

(46) Average import price from the PRC continually decreased by a total of 24 % during the period considered.

Table 4 — Average import price of Chinese imports

Average import price of Chinese imports	2000	2001	2002	2003	IP	IP/2000
EUR/tonne	174	164	149	135	133	
Index	100	94	86	78	76	– 24

Source: Eurostat data.

Price evolution of the imports and undercutting

(47) The average price of imports of the product concerned from the PRC during the IP was EUR 133 per tonne CIF at the EC frontier as reported in Taric. For the purpose of analysing price undercutting, the average sales prices (ex-works) of the Community industry were compared to the Chinese import prices during the IP, duly adjusted for post import cost, customs and anti-dumping duty. On this basis, no undercutting was found.

Economic situation of the Community industry

Production, production capacity and capacity utilisation

Table 5 — Production

Production	2000	2001	2002	2003	IP	IP/2000
Index	100	104	102	97	95	– 5
Y/Y trend		4	– 2	– 5	– 2	

Source: Verified questionnaire replies of the Community industry

(48) The Community industry's production first increased by 4 % between 2000 and 2001 following to some extent the trend of the Community consumption. However, it then continuously decreased for a total decrease of 5 % over the period considered. During the IP the Community industry's production of magnesium oxide represented around 55 % of Community consumption.

Table 6 — Production capacity

Production capacity	2000	2001	2002	2003	IP	IP/2000
Index	100	100	100	100	100	0
Y/Y trend		0	0	0	0	

Source: Verified questionnaire replies of the Community industry

(49) Production capacity remained stable over the period considered.

Table 7 — Capacity utilisation

Capacity utilisation	2000	2001	2002	2003	IP	IP/2000
Index	100	104	102	97	95	– 5

Source: Verified questionnaire replies of the Community industry

(50) The above table shows that during the period considered capacity utilisation followed the same trend as production. After an increase between 2000 and 2001, it continuously decreased. Over the period considered, the decrease amounted to 5 percentage points.

Sales volume and sales prices

Table 8 — Sales volume on the Community market (in tonnes)

Sales volume on the Community market	2000	2001	2002	2003	IP	IP/2000
To unrelated parties						
Index	100	98	94	87	89	– 11
To related parties						
Index	100	149	150	150	157	57
To related and unrelated parties						
Index	100	104	101	95	97	– 3

Source: Verified questionnaire replies of the Community industry

(51) The Community industry's sales to unrelated customers on the Community market decreased by 11 % between 2000 and the IP. Sales to related companies increased by 57 % between 2000 and the IP. These sales concerned only one company and were made to subsidiaries belonging to the same group. They represented around 17 % of all sales of magnesium oxide during the period considered.

(52) The overall sales volume on the Community market decreased by 3 % between 2000 and the IP.

Table 9 — Community industry sales prices of magnesium oxide

Community industry sales price to unrelated parties	2000	2001	2002	2003	IP	IP/2000
Index	100	108	110	109	109	9
Y/Y trend		8	2	– 1	– 1	

Source: Verified questionnaire replies of the Community industry

(53) In the period 2000 to the IP, the average sales prices of magnesium oxide charged by the Community industry on the Community market increased by 9 %. The sales prices peaked in the year 2002, slightly falling again in 2003 and the IP.

Market share

Table 10 — Market share

Market share of Community industry	2000	2001	2002	2003	IP	IP/2000
Percentage of market	62	61	59	63	65	
Index	100	98	95	102	105	5

Source: Eurostat data and verified questionnaire replies of the Community industry

(54) The market share held by the Community industry increased from 62 % in 2000 to 65 % in the IP. A major increase took place between 2002 and 2003 (7 % of the market).

(55) It seems that Community industry has managed to gain market shares due to its competitive prices compared to other third countries.

Stocks

Table 11 — Stocks

Stocks	2000	2001	2002	2003	IP	IP/2000
Index	100	107	94	101	81	– 19
Y/Y trend		7	– 13	7	– 20	

Source: Verified questionnaire replies of the Community industry

(56) The above table shows that during the period considered stocks were reduced by 19 %. During the period from 2000 to 2003 stocks were around 43 000 tonnes, while in the IP, they fell to just over 35 000 tonnes.

(57) Stocks, which had represented around 16 % of the Community industry's EU sales volume in 2000, fell to around 14 % of EU sales during the IP.

Profitability and cash flow

(58) During the period considered profitability expressed as a percentage of net sales value to unrelated parties developed as follows:

Table 12 — Profitability

Profitability	2000	2001	2002	2003	IP	IP/2000
Index	100	113	538	13	200	100

Source: Verified questionnaire replies of the Community industry

(59) After a loss in 2000, the Community industry's sales have started being profitable until the end of the IP. In 2002 profit peaked up to 4,3 % but fell to 0,1 % in 2003 and to 1,6 % in the IP. A decrease in 2003 was due to the decrease in sales volumes and a pressure of the prices exerted by the Chinese exporters which have not allowed the Community industry to increase its prices at the level sufficient to achieve a reasonable profit margin.

(60) It is noted that, when taking into account sales to related parties, profitability would be slightly lower, but the trend would not change.

Table 13 — Cash flow

Cash flow	2000	2001	2002	2003	IP	IP/2000
Index	100	128	160	82	134	34
Y/Y trend		28	33	– 79	52	

Source: Verified questionnaire replies of the Community industry

(61) Cash flow improved by 34 % during the period considered, and followed a similar trend as that for profitability.

Investments, return on investments, ability to raise capital

Table 14 — Investments

Investments	2000	2001	2002	2003	IP	IP/2000
Index	100	92	76	74	81	– 19
Y/Y trend		– 8	– 16	– 2	6	

Source: Verified questionnaire replies of the Community industry

(62) Investments decreased by around 19 % from 2000 to the IP. Nevertheless, in the current IP investments were 24 % higher then in the IP of the previous investigation in which the investments peaked at ECU 4 219 thousand. The investments mainly concerned the improvement and further rationalisation of the production process in order to economise costs and conform to environmental requirements.

Table 15 — Return on investments

Return on investments	2000	2001	2002	2003	IP	IP/2000
Index	100	129	700	14	231	131

Source: Verified questionnaire replies of the Community industry

(63) After being negative in 2000, return on investments increased by around 11,6 percentage points during the period considered, and followed a similar trend as that for profitability.

(64) The Community industry remained able to raise capital during the period considered.

Employment, productivity and wages

Table 16 — Employment

Employment	2000	2001	2002	2003	IP	IP/2000
Index	100	99	90	85	80	– 20
Y/Y trend		– 1	– 9	– 5	– 5	

Source: Verified questionnaire replies of the Community industry

(65) The above table shows that employment decreased by 20 % during the period considered. The main decrease occurred in the period from 2001 to the IP.

(66) Given that production decreased at a lower rate than employment, productivity increased by 19 % over the same period, as shown in the table below:

Table 17 — Productivity

Productivity	2000	2001	2002	2003	IP	IP/2000
Index	100	105	113	115	119	19
Y/Y trend		5	8	2	4	

Source: Verified questionnaire replies of the Community industry

(67) During the period considered the wages of the employees of the Community industry decreased by around 4 %.

Table 18 — Wages

Wages	2000	2001	2002	2003	IP	IP/2000
Index	100	104	99	100	96	– 4
Y/Y trend		4	– 4	0	– 3	

Source: Verified questionnaire replies of the Community industry

Effect of other factors

Export activity of the Community industry

(68) The investigation showed that the export activity of the Community industry developed as follows:

Table 19 — Community industry exports

Community industry exports	2000	2001	2002	2003	IP	IP/2000
Tonnes	9 240	9 206	15 671	9 962	10 022	
Index	100	100	170	108	108	8
Y/Y trend		0	70	– 62	1	

Source: Verified questionnaire replies of the Community industry

(69) The Community industry exports of magnesium oxide increased by 8 % over the period considered, mainly in 2002. However, an increase in the export volumes might have had little influence on the situation of the Community industry as these exports amounted on average to around 4 % of the total sales of the Community industry.

Import volumes and prices from other third countries

(70) Import volumes of magnesium oxide into the Community from countries other than the PRC, together with their average prices, developed as follows:

Table 20 — Imports into the Community from other third countries (volume)

Tonnes	2000	2001	2002	2003	IP
Turkey	2 704	3 116	7 010	2 105	1 373
USA	849	1 518	326	704	897
Israel	2 417	2 558	2 714	3 156	2 725
Mexico	703	781	627	856	755
Japan	1 949	1 658	2 081	627	455
Australia	1 115	749	42	341	301
Norway	459	198	72	117	149
Other third countries	56	1 462	679	109	516
Total	10 252	12 041	13 550	8 016	7 172

Source: Eurostat data

Table 21 — Imports into the Community from other third countries (average price)

Euro	2000	2001	2002	2003	IP
Turkey	128	147	154	169	195
USA	1 475	509	1 431	796	795
Israel	964	712	607	611	667
Mexico	458	718	870	591	617
Japan	1 164	1 173	1 044	713	458
Australia	609	495	466	407	431
Norway	284	0	495	295	270
Other third countries	0	528	740	200	191

Source: Eurostat data

Table 22 — Market share of imports into the Community from other third countries

Market share of imports into the Community from other third countries	2000	2001	2002	2003	IP	IP/2000
Percentage of market	2	2	3	2	1	– 1
Index	100	117	129	80	73	

Source: Eurostat data

(71) The total import volumes of magnesium oxide from third countries other than the PRC decreased during the period considered from 10 252 tonnes in 2000 to 7 172 tonnes in the IP. For calculating market shares of the imports from other third countries, a slight adjustment was made by excluding the volume of imports sold on the Community market and purchased by one of the Community producers from its subsidiary in Turkey. The market share of these imports fell from around 2 % to 1 % over this period. The major exporters to the Community have been Turkey, Israel, Australia and the USA.

(72) The average import prices from other third countries were significantly higher than those of the Community industry during the IP. It should be noted, however, that Eurostat data with 10-digit Taric code also include prices of synthetic magnesium oxide with a much higher purity than the product concerned and therefore higher prices. While no precise information is available as to the proportion between synthetic magnesium oxide and the product concerned in the product mix, subject to the Eurostat data with 10-digit Taric code, it can be reasonably assumed that the overall price level of magnesium oxide from third countries was higher than that of the Community industry during the IP.

Conclusion

(73) As explained above, consumption of the product concerned decreased slightly during the period considered. As in the previous expiry review, it is considered, however, that Community consumption did not have a major influence on the situation in the Community industry during the period considered as explained in recital 42 on the Community consumption.

(74) The measures in force have led to a partial recovery of the Community industry since 2000. Economic factors such as market shares, profitability, return on investment, cash flow, productivity and closing stocks showed a positive development. The Community industry's sales have been profitable from 2001 (0,9 %) to the IP (1,6 %). However, due to the pressure exerted by the Chinese exporters, Community industry has not been able to achieve sufficient profit, necessary to ensure its viability in the future. As regards the downward trend in production (– 5 %), capacity utilisation (– 5 %) and sales in the Community market (– 3 %), it was more or less in line with the decrease in the consumption. However, this has been at the expense of employment (– 20 %), and investments (– 19 %). It is noted that the sales made by one Community producer to related parties did not change the overall picture of the situation of the Community industry. It can therefore be concluded that, although the situation of the Community industry has improved, it remains vulnerable, *inter alia*, as a result of the continued dumped imports from the PRC. The efforts of the Community industry to improve its competitiveness have therefore not been entirely successful.

(75) On the other hand, it should also be noted that volumes and market share of Chinese imports have decreased over the period considered. Furthermore, it was found that Chinese imports had not undercut the prices of the Community industry. Under these circumstances and, in particular, in view of the limited improvement of the situation of the Community industry, the decrease of Chinese imports and market share and the absence of undercutting, the continuation of injury caused by dumped imports could not be established. Therefore, it was examined whether there would be recurrence of injury if the measures lapsed.

Likelihood of recurrence of injury

(76) With regard to the likely effect on the situation of the Community industry of the expiry of the measures in force, a number of factors were taken in line with the elements summarised in the recitals above.

(77) As already indicated, if the anti-dumping measures were allowed to expire, it is very likely that imports at dumped prices of the product concerned from the PRC would increase considerably in view of the large spare production capacity held by the PRC resulting from the fact that it has the largest magnesite ore resources in the world.

(78) The comparison between imports from the PRC and other third countries into the Community has shown important differences in prices. Import prices from other third countries were high during the period considered while Chinese import prices, which are dumped, have continuously decreased. Furthermore, the fact that Chinese export prices to the other main markets for magnesium oxide were 38 % below the export prices to the Community shows clearly that Community industry would face more pressure from increased volumes of dumped exports of the product concerned from the PRC, bearing in mind that these exports have already exerted a downward pressure on the Community prices during the period considered.

(79) In the light of the above, it is concluded that allowing the measures to lapse would in all likelihood result in a recurrence of injury to the Community industry.

G. COMMUNITY INTEREST

Preliminary remark

(80) In accordance with Article 21 of the basic Regulation, it was examined whether maintaining the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users and suppliers of the product concerned.

(81) It should be recalled that in the previous review, the re-imposition of the measures was considered not to be against the interest of the Community. Furthermore, as the present investigation is also an expiry review, it allows an analysis of any undue negative impact on the parties concerned by the current anti-dumping measures.

(82) On this basis, it was examined whether, despite the conclusion on the likelihood of a continuation of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

Interests of the Community industry

(83) It is recalled that it has been established that there is a likelihood of continuation of dumping of the product concerned originating in the PRC and that there is a risk of recurrence of injury to the Community industry arising from such imports. Moreover, it was found that the Community industry is still in a fragile situation. Continuation of the measures should help them to fully recover and avoid further injury. Therefore, it is in the interest of the Community industry to maintain measures against dumped imports from the PRC.

Interests of unrelated importers/traders

(84) The Commission's services sent out questionnaires to 23 importers/traders named in the complaint. No answers were received.

(85) In these circumstances, it was concluded that the measures in force did not greatly affect importers or traders and therefore the continuation of measures would not significantly affect these parties. This is also in line with the findings made in previous investigations.

Interests of users

(86) The Commission's services sent out questionnaires to four users. No answers were received.

(87) Given the lack of response to the questionnaires and of verifiable data in support of an expiry of the measures in force, as in the previous expiry review, it is concluded that the continuation of the duties would not have a significant effect on users.

H. **CONCLUSION**

(88) The investigation has shown that exporters in the PRC have continued their dumping practices during the IP. It has also been demonstrated that the Community market is an attractive market for Chinese exporters, given the level of prices charged to other export markets and bearing in mind significant spare capacity in the PRC. Therefore, if measures were repealed, it is likely that huge quantities of dumped imports would enter the Community market.

(89) The situation of the Community industry, reflected in the reduced production, sales and employment and insufficient profit during the period considered, would most likely be aggravated if measures were repealed as increased volumes of dumped imports from the PRC would start to flow onto the Community market.

(90) Regarding the Community interest, it is concluded that there are no compelling reasons not to impose anti-dumping measures against imports of the product concerned originating in the PRC.

(91) It is therefore considered appropriate to maintain the current anti-dumping measures against imports of magnesium oxide originating in the PRC.

(92) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to disclosure. No comments were received which were such as to change the above conclusions.

(93) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of magnesium oxide originating in the PRC, imposed by Council Regulation (EC) No 1334/1999, as last amended by Regulation (EC) No 985/2003, should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of magnesium oxide falling within CN code ex 2519 90 90 (Taric code 2519 90 90*10) and originating in the People's Republic of China.

2. The amount of the anti-dumping duty shall be:

(a) the difference between the minimum import price of EUR 112 per tonne and the net, free-at-Community frontier price, before duty, in all cases where the latter is:

— less than the minimum import price, and

— established on the basis of an invoice issued by an exporter located in the People's Republic of China directly to an unrelated party in the Community (TARIC additional code A420);

(b) zero, if the net, free-at-Community-frontier price, before duty, is established on the basis of an invoice issued by an exporter located in the People's Republic of China directly to an unrelated party in the Community and equal to or higher than the minimum import price of EUR 112 per tonne (TARIC additional code A420);

(c) equal to an ad valorem duty of 27,1 % in all other cases not falling under subparagraph (a) and (b) (TARIC additional code A999).

In cases where the anti-dumping duty is established according to subparagraph 2(a) of Article 1 and where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1], the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Community-frontier price, before customs clearance.

3. Unless otherwise specified, the provisions in force concerning custom duties shall apply.

Article 2

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

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

Done at Brussels, 23 May 2005.

For the Council
The President
J. ASSELBORN

[1] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).