

COMMISSION REGULATION (EEC) No 2799/92

of 25 September 1992

imposing a provisional anti-dumping duty on imports of deadburned (sintered) magnesia originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 11 thereof,

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

Whereas :

A. PROCEDURE

(1) In October 1991 the Commission announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of deadburned magnesia falling within CN code 2519 90 30, originating in the People's Republic of China.

(2) The Commission officially informed the exporters and importers known to be concerned, the representatives of the exporting country and the complainants.

It requested the parties concerned to reply to the questionnaires which had been sent to them and gave them the opportunity to make known their views in writing and to request a hearing.

(3) All the complainant Community producers, representing the entire Community production of natural deadburned magnesite, replied to the questionnaires (see recital 6). Eurométaux, on behalf of the Community producers, made its views known in writing and requested a hearing which the Commission granted.

(4) Five Chinese trading organizations, hereafter referred to as Chinese exporters, (Liaoning Metals & Minerals Import and Export Corporation, China Metallurgical Import and Export Corporation, Citic Trading Inc., China Metallurgical Import and Export Corporation, Dalian Branch, China

National Minerals Import and Export Corporation) replied to the questionnaires.

In addition, the principal organization in the People's Republic of China with responsibility for trade in deadburned magnesite, the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, made known in writing the views of the cooperating Chinese exporters. That organization and the cooperating Chinese exporters sought a hearing and this was granted by the Commission.

It became apparent, after a comparison with the Eurostat Official Statistics, that the five Chinese exporters which cooperated accounted for approximately 33 % of exports of deadburned magnesite from the People's Republic of China to the Community and that no information, apart from Eurostat, was available regarding exports by other Chinese exporters.

(5) The Commission sent questionnaires to the importers listed in the complaint.

In addition two other importers made themselves known to the Commission within the period specified in the notice of initiation.

It became apparent, after a comparison with the Eurostat Official Statistics, that the four Community importers which cooperated accounted for approximately 67 % of imports of deadburned magnesite from the People's Republic of China to the Community.

(6) The Commission investigated and verified all the information considered necessary for the purposes of a preliminary determination of dumping and resultant injury. To this end it carried out an investigation at the premises of the following :

(a) *Community producers* :

- Grecian Magnesite SA, Athens, Greece,
- Financial Mining, Industrial and Shipping Corporation, Athens, Greece (Fimisco),
- Magnomin SA, Thessaloniki, Greece,
- Magnesitas Navarras, Pamplona, Spain.

Two of the Greek producers, Financial Mining Industrial and Shipping Corporation (Fimisco) and Macedonian Magnesite Mining Industrial Shipping Co. ceased all operations in November 1991.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 276, 23. 10. 1991.

Consequently, certain information requested from both companies was not available for the investigation period.

(b) *Importers into the Community:*

- Frank & Schulte, Essen, Germany,
- Possehi Erzkontor GmbH, Lübeck, Germany,
- Otavi Minen AG, Eschborn, Germany,
- Van Mannekus, Rotterdam, The Netherlands.

- (7) The Commission also sought information from producers in the reference country suggested by the complainant and considered reasonable by the Commission (see recitals 14 and 15). Valuable and complete information was provided by and verified at Magnesit Anonim Sirketi, Eskisehir, Turkey.
- (8) The investigation of dumping covered the period from 1 July 1990 to 30 June 1991 (the investigation period).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (9) The product covered by this proceeding is natural deadburned magnesite, hereinafter referred to as deadburned magnesite. Magnesite is a naturally occurring magnesium carbonate. To produce deadburned magnesite the ore is mined, crushed, sorted and then burnt in a kiln at temperatures of 1 500 to 2 000 °C. Deadburned magnesite has a magnesia content ranging from about 80 to 98 % MgO (magnesium oxide). The main impurities are SiO₂, Fe₂O₃, Al₂O₃, CaO and B₂O₃ (silicon oxide, iron oxide, aluminium oxide, calcium oxide and boron oxide). The main application for deadburned magnesite is in the refractory industry to make formed and unformed refractories.

2. Like product

- (10) As regards the definition of like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88, the Commission has found that deadburned magnesite of whatever origin has to be regarded as one single product having the same basic and identical physical and chemical characteristics and the same applications.
- (11) In this respect the Commission has established that all deadburned magnesite is produced from mineral deposits which are similar in terms of the raw magnesite content and the existence of impurities. It is extracted and processed in similar ways and is used to make the same range of refractory products.

It is true that the methods of extraction, the magnesite content of the deposit, the level of impurities, and the production process, may vary from mine to mine, worldwide. However, these differences do not have a considerable bearing on the end product and are not such as to justify the Chinese claim that deadburned magnesite production in the People's Republic of China is unique in term of the methods and processes used in manufacture and the chemical and physical characteristics of the magnesite.

- (12) Deadburned magnesite may take the form of different grades of MgO (magnesium oxide) and the end product is not chemically uniform. However, the Commission found no clear dividing lines enabling the classification of deadburned magnesite into a number of different like products. The boundary between the grades is blurred by overlapping usage since consumers do use, for identical purposes, magnesite of different grades and from different sources of supply.

In these circumstances, the Commission cannot accept the argument of the Chinese exporters that Chinese deadburned magnesite is unique in terms of the application of the final product since the different types of the final product clearly resemble and are in competition with each other. Consumer's perception of all magnesite is as a material for the production of formed and unformed refractories regardless of its source. Differences in the cost of production of different grades have not bearing on the end product as such and have been taken into account in the construction of normal value (see recital 16).

- (13) The Commission, therefore, concludes that all qualities of deadburned magnesite have to be considered to be one single like product.

C. DUMPING

1. Normal value

- (14) In order to establish whether imports of deadburned magnesite originating in the People's Republic of China were being dumped, the Commission has to take into account the fact that China is not a market economy country and accordingly, to base its calculations on the normal value of the product in question in a market economy. To that end, the complainant had proposed Turkey. Chinese exporters made known their objections to Turkey as a reference country, arguing only that no like product existed in Turkey. However, they suggested no alternative reference country. For the reasons given above, this objection has, for the purposes of provisional findings, been rejected (see recital 10).

The Commission examined whether Turkey was a reasonable choice of reference country: in this respect the choice of the reference country has to be based on criteria such as the level of economic development, the access to raw materials, the competitive situation, and the representativity of the market in relation to the quantities exported by the exporting country.

Turkey is a market economy country having a comparable level of economic development to that of China, at least for the sector in question. As already shown (recital 11) the extraction process of the Turkish producers with regard to the raw material is similar to that of the Chinese exporters. Moreover, there are three Turkish companies selling on the domestic market which are in competition with each other. The quantity of their domestic production of deadburned magnesite is representative in relation to the Chinese exports. Finally, no specific objection was raised by any interested party against the choice of Turkey. For these reasons, the Commission considers that, for the purposes of provisional findings, Turkey is an appropriate reference country.

- (15) As far as the question as to whether sales prices on the Turkish domestic market can serve as a basis for determination of the normal value is concerned, the investigation in Turkey revealed that there are restrictions on the importation of deadburned magnesite into Turkey which may have some effects on price competition in Turkey. In addition, the Turkish market is one where the majority of sales of deadburned magnesite are between related companies and therefore are not considered to be in the ordinary course of trade. The Commission thus considers it inappropriate to base normal value on selling prices. However, costs of production for excavation and processing are determined competitively as shown by the widespread use of subcontractors, selected through a process of competitive tendering. Therefore, in accordance with Article 2 (5) (b) of Regulation (EEC) No 2423/88, it was considered that for the purpose of provisional findings a normal value has to be established on the cost of production of the cooperating producer.

- (16) For each grade of deadburned magnesite the constructed value was determined by adding toge-

ther all costs of production, both fixed and variable, incurred in the ordinary course of trade. To these costs were added a reasonable amount for the domestic selling and administrative expenses for this product during the investigation period based on the information available to the Commission.

The Chinese exporters argued that any cost calculations based on any country other than China should reflect the lower cost of raw material extraction and lower processing costs prior to burning found in China. The Commission has taken into account the specific situation in China in so far as it accepts that the purity of the deposit in China indicates that during the production process certain sorting and beneficiation⁽¹⁾ processes which are necessary in Turkey are not necessary in China. For this reason these specific Turkish costs which were found to account for 25 % of the Turkish cost of production were therefore deducted from the cost of production which serves as the basis for the normal value.

- (17) A reasonable profit margin was established on the basis of the information available concerning the profit requirements of the Turkish deadburned magnesite industry in the light of the level of investments essential to maintain production at the present level of technical efficiency. This margin is also considered as ensuring an acceptable return on the capital invested.

2. Export Price

- (18) Export prices were established on the basis of the prices actually paid or payable by the cooperating importers for deadburned magnesite exported to the Community.

D. COMPARISON

- (19) In its comparison of normal value and export prices, the Commission took account, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, of differences affecting price comparability,

⁽¹⁾ Beneficiation is the complex processing of the ore to remove impurities, notably heavy media separation, magnetic separation and flotation.

The comparison was made at the ex-works level on a transaction-by-transaction basis and at the same level of trade.

In the case of export prices, ocean freight and insurance costs for transport from China were deducted from export prices to arrive at fob prices; on the basis of the data available in Turkey, deductions were made relating to inland transport, insurance, handling and packing costs.

In the case of normal value, adjustments were made on the basis of the data in Turkey relating to internal transport, the cost of insurance, handling and packaging.

For the purpose of ensuring a fair comparison differences in physical characteristics were taken into account. Thus, the Commission noted that the Turkish producer did not produce all the MgO grades exported by the Chinese producers. The Commission has thus adjusted normal value to establish the full range of MgO grades by taking into account the cost of production differences by grade experienced by the Turkish producer. This included a 9 % adjustment to the cost of production to allow for the lower fuel costs incurred in producing grades up to and including 92 % MgO.

- (20) The Chinese exporters claimed that Chinese deadburned magnesite, in contrast to the Turkish like product, has to be considered to be substandard as it commands lower prices caused by the existence of certain chemical impurities, deterioration during transport and storage, and because the product is contaminated during burning.

The Commission has not found evidence of price differentials between Turkish and Chinese deadburned magnesite as it has not established that the Chinese product is substandard because of chemical impurities, deteriorates during transport or is contaminated. In the perception of end-users the product is not seen as being substandard in any way. Therefore, in accordance with Article 2 (9) (b) of Regulation (EEC) No 2423/88 these claims, have, for the purpose of provisional findings, been rejected.

E. DUMPING MARGIN

- (21) Normal value, determined as described above, was compared with the export prices on a transaction-by-transaction basis.

The preliminary examination of the facts shows that imports of deadburned magnesite are being dumped. The dumping margin is equal to the difference between the normal value and the price on export to the Community. Calculated as a

percentage of the weighted average cif value of the imports concerned it is ECU 69 per tonne.

The five Chinese exporters which cooperated claimed that they acted independently and were therefore entitled to individual dumping margins. However, these exporters are State-controlled organizations and are not joint ventures between Chinese and foreign companies. The Commission considers that because of the lack of independence of the exporters their claim, in this respect, has to be rejected.

F. INJURY

1. Factors relating to dumped imports

(a) *Volume*

- (22) On the basis of the Eurostat data shown under CN code 2519 90 30 imports originating in the People's Republic of China rose from 117 000 tonnes in 1988 to over 176 000 tonnes during the investigation period making China by far the largest exporter of deadburned magnesite to the Community.

(b) *Market share*

- (23) In calculating total consumption of deadburned magnesite on the Community market the Commission added Community producers sales in the Community to the total imports into the Community as shown under CN code 2519 90 30. This total was adjusted for re-exports from the Community. Total consumption is estimated as being 378 000 tonnes in 1988 and 429 000 tonnes in the investigation period. On this basis the Chinese exporters market share has risen substantially from 31 % in 1988 to 41 % during the investigation period. This increase should be viewed in the light of an increase in the size of the market of 13 % between 1988 and the investigation period, at a time when imports from China increased by 51 %.

(c) *Prices*

- (24) As regards price erosion, the Eurostat data shows that Chinese exporters reduced their prices by 9 % between 1988 and the investigation period. The reduction shown in the prices of the cooperating importers which have been taken as the basis for calculating the dumping margin, is even higher between 1988 and the investigation period than that shown by Eurostat.

The Commission also compared the average price of the imports from China (at the free-at-Community frontier duty paid stage) and the selling prices, calculated at the ex-works level, on a monthly average basis, of the same type of grades sold by Community producers. Every single import transaction, except one, was at a price lower than that of the Community producers.

The price undercutting during the investigation period was 64 % based on Community producers sales prices.

2. Factors relating to the state of the Community industry

(a) Production

- (25) Community production of deadburned magnesite during the investigation period was only 62 % of its 1988 level.

(b) Capacity, capacity utilization

- (26) For the calculation of capacity utilization the Commission has taken the total capacity available to produce both deadburned and caustic magnesite and allocated production capacity in proportion to the actual yearly production of both products.

Calculated on this basis, capacity utilization by the Community fell from 79 % in 1988 to 71 % during the investigation period. The capacity utilization of Fimisco and of Macedonian Magnesite Mining was not made available due to the cessation of both companies' activity in November 1991.

(c) Stocks

- (27) While production fell between 1988 and the investigation period, stock levels increased by 28 %. These figures do not include the stocks of Fimisco and of Macedonian Magnesite Mining which, it is understood, were large but on which no detailed information could be provided.

(d) Sales and market share

- (28) Community producers' sales quantity on the Community market fell by 15 % between 1988 and the investigation period, at a time when the size of the market was increasing. Sales by Fimisco and Macedonian Magnesite Mining are excluded from this figure. If sales by Fimisco and Macedonian Magnesite Mining are included there is an even more substantial drop in sales.

Community producers' market share fell from 37 % in 1988 to 23 % in the investigation period, at a time when the market was increasing in size (see recital 23).

(e) Prices

- (29) An analysis of the prices charged by Community producers on the markets where Chinese imports occur shows that the prices of the Community industry, on the basis of a grade-by-grade comparison, fell by 10 % between 1988 and the investigation period. During this period Community producers reduced their sales of lower grades and concentrated on selling the more highly priced MgO grades.

(f) Profits

- (30) The financial results achieved by Community producers have deteriorated since 1988 and two producers have ceased trading. During the investigation period the Community producers were incurring losses or substantially reduced returns on sales.

(g) Employment

- (31) With regard to the employment situation in the Community industry, employment fell by 14 % between 1988 and the investigation period, excluding Fimisco and Macedonian Magnesite Mining for the reasons given in recital 6.

3. Conclusion

- (32) In view of the fall in production, the decline in capacity utilization, the increase in stock levels, the fall in sales quantity and the loss of market share, the fall in prices and the loss or seriously reduced return on sales, the Commission considers that the Community industry has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

G. CAUSAL LINK BETWEEN THE INJURY AND THE DUMPED IMPORTS

1. Effect of dumped imports

- (33) The Commission compared the volume and price trends of the dumped imports from China side-by-side with the sales and market share of the Community industry. It found that the deterioration of the economic situation of the Community industry coincided with the increase in volume of imports of Chinese deadburned magnesite.

It was the Chinese exporters which gained from the increase in consumption seen in the Community between 1988 and the investigation period at the expense of the Community industry.

- (34) The Commission found price to be the most important factor for customers in determining their source of supply. Consequently, the considerable price undercutting by the Chinese producers due to the effect of dumping has had a direct effect on the Community industry's volume of sales and their losses. The Community industry had been prevented from selling at a price level which would allow profit.

2. Effect of other factors

- (35) The Commission considered whether injury to the Community industry had also been caused by other factors.

The Commission identified North Korea as being the next largest exporter of deadburned magnesite to the Community. Calculating market size on the same basis as for China the North Korean market share has decreased from 18 % in 1988 to 14 % during the investigation period. Even if these imports have also caused some injury this does not detract from the Commission's finding that Chinese imports, taken in isolation, caused material injury. The Commission will, however, monitor the situation closely (see recital 41).

- (36) The Chinese exporters have suggested that any injury experienced by Community producers relating to grades over 92 % MgO cannot be caused by imports from China. They argue that, in general, high MgO grades over 92 % are not exported into the Community from China.

There is, however, clear evidence of the export of higher grades by the Chinese exporters at dumped prices during the investigation period. In addition, grades overlap in their use (see recital 12). The findings of injury have to be established on a global basis for the like product. It would be arbitrary to identify injury on a grade by grade basis.

- (37) An end-user has argued that because of the particular chemical structure of Chinese deadburned magnesite it has adapted its manufacturing process so as to use only Chinese magnesite and is, therefore, no longer a customer of the Community industry.

In this respect the Commission notes firstly, that the Community industry is a potential supplier of all specifications of deadburned magnesite for refractory products. Secondly, the adaptation of manufacturing processes to use Chinese magnesite is due to the price level of the Chinese imports for which dumping was found.

- (38) The Chinese exporters have argued that any injury experienced by the Community industry is caused by the inefficiency of the Community industry itself. However, this argument has not been substantiated and contradicts the evidence available to the Commission which indicates that the existing Community producers are notably efficient as a result of the rationalization and modernization of the industry.

3. Conclusion

- (39) The Commission concludes that taken in isolation, dumped imports of deadburned magnesite originating in the People's Republic of China have caused material injury to the Community industry.

H. COMMUNITY INTEREST

- (40) In order to examine whether the interests of the Community call for intervention to prevent the injury being caused during the proceeding, the Commission considered that the purpose of anti-dumping duties is, in general, to stop distortion of competition arising from unfair commercial practices and thus to re-establish open and fair competition on the Community market, which is fundamentally in the general Community interest.

With regard to this proceeding, the Commission considers that without measures to correct the effect of dumped Chinese imports, those firms still producing deadburned magnesite may be forced to shut down completely. Annual losses or seriously reduced profit levels are already a major problem for all Community producers, despite attempts to reduce costs by reducing employment levels, using sub-contractors, increasing efficiency and upgrading production facilities.

The Commission's view is that it would not be in the Community's interest to abandon a structurally sound industry at a time when, faced by unfair competition, it is sustaining serious injury which is jeopardizing its short-term viability.

- (41) The Chinese exporters put forward two main arguments with regard to Community interest.

The first was that it is not in the Community interest to impose ineffective measures. They claim that Community producers would not benefit from anti-dumping measures imposed on Chinese exports as these exports would be replaced by low period imports, above all from North Korea.

The Commission has considered the likely impact of these measures on the operation of the market for deadburned magnesite. It has found that the Chinese exporters are the market price leaders in that order exporters follow Chinese prices. It can thus be expected that the price increase resulting from the imposition of anti-dumping duties will also be followed by other exporters.

Therefore, and since no complaint has been lodged against any other exporter the Commission does not, for the time being, consider that there is sufficient reason to take action against imports from North Korea. However, the Commission will monitor the situation closely. Should Chinese imports be, to a large extent, replaced by imports from North Korea so that the injurious situation is not removed, the position of the Commission may be revised and appropriate action will be considered.

- (42) The second argument put forward by the Chinese exporters was that it is not in the Community's interest to increase costs for the refractory industry or the steel industry due to anti-dumping measures. Any cost increases would seriously affect the ability of the refractory industry and the steel industry to compete on international markets.

The Commission acknowledges that deadburned magnesite is a significant part of the cost of production of refractories. However, without measures, the Community deadburned industry will face a further deterioration of its already weakened position with the strong possibility of total shutdown. The negative results of such an eventuality would leave the Community with, at best, a much smaller natural deadburned magnesite industry, with the consequent loss of research, development and employment.

The refractory industry and in turn the steel industry would become further dependent on imported supplies. In the long term fewer competitors would mean higher prices. When these negative consequences are balanced with the short-term interest of users who would benefit from supplies at lower prices, it is evident that the Community inte-

rest lies more in sustaining, over the long term, a viable magnesite industry.

- (43) In the light of the above, the Commission concluded that it is in the Community interest to adopt measures to prevent the injury being caused to Community production by imports of deadburned magnesite originating in the People's Republic of China during the proceeding and that the measures should take the form of a provisional anti-dumping duty.

I. PROVISIONAL DUTY

- (44) In order to determine whether a lower duty than the dumping margin should be imposed, in accordance with Article 13 (3) of the Basic Regulation the Commission compared the weighted average selling price of Chinese deadburned magnesite (on a free-at-Community frontier basis) with the corresponding weighted average production cost of deadburned magnesite produced during the same period by the Community industry, on a grade-by-grade basis.

Since the difference was higher than the dumping margin established it is the latter which should be imposed.

The duty shall take the form of a fixed amount. The Commission considers that, given the high level of price undercutting and of price decrease found during the investigation period, an *ad valorem* duty would diminish in effect and would not result in effective measures.

J. FINAL PROVISION

- (45) In the interests of sound administration a reasonable period should be allowed for interested parties to make known their views in writing on the findings contained in this Regulation and to request to be heard by the Commission,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of deadburned (sintered) magnesia originating in the People's Republic of China falling within CN code 2519 90 30.
2. The amount of duty shall be ECU 69 per tonne (net weight).
3. The provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the product referred to in paragraph 1 originating in the People's Republic of China 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) of Regulation (EEC) No 2423/88 the parties concerned may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, it shall apply for a period of four months, unless the Council adopts definitive measures before that period has elapsed.

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

Done at Brussels, 25 September 1992.

For the Commission

Frans ANDRIESEN

Vice-President
