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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 716/2006

of 5 May 2006

imposing a definitive anti-dumping duty on imports of dead-burned (sintered) magnesia 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 the Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (hereinafter referred to as the basic Regulation), and in particular Articles 9 and 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) In December 1993, definitive anti-dumping measures on imports of dead-burned (sintered) magnesia (DBM or the product concerned) originating in the People's Republic of China (PRC) were imposed by Council Regulation (EC) No 3386/93 ⁽²⁾ (original investigation). These measures took the form of a minimum import price.
- (2) Following an expiry review, these anti-dumping measures were maintained in February 2000 by Council Regulation (EC) No 360/2000 ⁽³⁾.
- (3) Following an interim review, the Council, by Regulation (EC) No 986/2003 ⁽⁴⁾, 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 63,3 % in all other cases.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ L 306, 11.12.1993, p. 16.

⁽³⁾ OJ L 46, 18.2.2000, p. 1. Regulation as amended by Regulation (EC) No 986/2003 (OJ L 143, 11.6.2003, p. 5).

⁽⁴⁾ OJ L 143, 11.6.2003, p. 5.

2. Request for a review

- (4) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of DBM originating in the PRC ⁽⁵⁾, the Commission's services received a request in November 2004 to review these measures pursuant to Article 11(2) of the basic Regulation.
- (5) The request was lodged by Eurométaux, acting on behalf of Community producers (hereinafter referred to as the applicant producers) representing a major proportion, in this case more than 50 %, of the total Community production of DBM.
- (6) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry. Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation ⁽⁶⁾ pursuant to Article 11(2) of the basic Regulation.

3. Investigation

- (7) The Commission's services officially advised the applicant Community producers, the other Community producers, the exporting producers in the PRC (hereinafter Chinese exporters), the importers, traders, users and their associations known to be concerned, as well as the representatives of the government of the exporting country, of the initiation of the review.
- (8) The Commission's services sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notice of initiation.

⁽⁵⁾ OJ C 215, 27.8.2004, p. 2.

⁽⁶⁾ OJ C 38, 15.2.2005, p. 2.

- (9) The Commission's services also gave the parties directly concerned 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.
- (10) 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 forms asking specific information on average sales volume and prices of each exporting producer and importer concerned. No reply was received from any exporting producer, and only three replies were received from importers. It was therefore decided that sampling was not necessary.
- (11) In addition, questionnaires were sent to producers in potential analogue countries, namely Brazil, Canada and Turkey, which were known to the Commission's services.
- (12) All the applicant Community producers replied to the questionnaire. No Chinese exporting producer and no importer replied to the questionnaire. However, two importers made their views known in writing. One user submitted a partial reply to the questionnaire.
- (13) The Commission's services sought and verified all information deemed necessary for the purpose of a determination of the likely continuation or recurrence of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) *applicant Community producers:*

- Grecian Magnesite SA, Athens, Greece,
- Magnesitas Navarras, SA, Pamplona, Spain,
- Slovenské magnezitové Závody as, Jelšava, Slovakia;

(b) *producer in the analogue country:*

- Kümaş Kütahya Manyezit İşletmeleri Pazarlama a.ş., Kütahya, Turkey.

4. Investigation period

- (14) The investigation of continuation or recurrence of dumping covered the period from 1 January 2004 to 31 December 2004 (hereinafter referred to as 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).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (15) The product concerned is the same as that in the previous investigations which led to the imposition of measures currently in force, i.e. natural dead-burned magnesite originating in the PRC and falling within CN code 2519 90 30.
- (16) DBM is processed from magnesite, that is naturally occurring magnesium carbonate. In order to produce DBM, magnesium carbonate has to be mined, crushed, sorted and then burned in a kiln at temperatures of 1 500 to 2 000 °C. The result is DBM with a MgO (magnesium oxide) content ranging from 80 to 98 %. The main impurities in DBM are SiO₂, Fe₂O₃, Al₂O₃, CaO and B₂O₃ (silicon oxide, iron oxide, aluminium oxide, calcium oxide and boron oxide respectively). DBM is mainly used in the refractory industry to make formed and unformed refractories. Although there are different types of the product concerned with e.g. various content of MgO, they all share the same basic chemical and physical characteristics and uses and are interchangeable. Therefore, as in the previous investigation, all grades of DBM should be considered to form one single product for the purpose of this investigation.

2. Like product

- (17) As established in the previous investigations, this review investigation has confirmed that the products exported by the PRC and those manufactured and sold on the domestic market of the PRC, as well as 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.

C. LIKELIHOOD OF A CONTINUATION OF DUMPING

- (18) 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.

1. Preliminary remarks

- (19) 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 referring to the eight-digit CN code, checked with other sources, were used in order to establish import quantities and prices.
- (20) Based on the Eurostat data, it was found that during the IP 369 079 tonnes of DBM were imported from the PRC into the Community, i.e. approximately 40 % of the Community consumption.
- (21) During the IP of the previous expiry review, the import volume of Chinese DBM into the Community amounted to 260 967 tonnes, i.e. 54 % of Community consumption.
- (22) 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 directly compared.

2. Dumping of imports during the investigation period

- (23) In accordance with Article 11(9) of the basic Regulation, the Commission's services used the same methodology as in the previous investigation. It is recalled that in the previous investigation, a dumping margin in the order of 50 % was established.

Analogue country

- (24) In calculating normal value, account was taken of the fact that for this investigation the normal value for imports from the PRC had to be based on data from a market economy third country in accordance with Article 2(7)(a) of the basic Regulation. In the notice of initiation Turkey was envisaged as an appropriate market economy third country. An unrelated importer submitted that Turkey was inappropriate on the grounds that the access to raw materials in Turkey was more difficult than in the PRC: magnesite mines in Turkey do not enjoy the same natural advantages as in the PRC so the extracting and processing costs were higher than in Chinese mines. Moreover, the same importer claimed that the Turkish domestic market was too small to be representative for the Chinese market. This importer suggested

Brazil or Canada as more appropriate potential market economy third countries.

- (25) The Commission's services examined whether Turkey, which was already used as market economy third country in the previous investigation, was still a reasonable choice. In particular, it was found that at least three Turkish companies produced and sold DBM in Turkey in significant quantities in competition with each other and with imports from other countries. The question of access to raw materials being easier in the PRC than in Turkey was addressed in the original investigation and no new evidence was submitted to change the conclusion that Turkey was an appropriate market economy third country. Insofar as such differences were shown to exist, these could be taken into account by making the necessary adjustments. One Turkish producer agreed to cooperate.
- (26) The proposal of Brazil and Canada as potential analogue countries was also taken into account and anti-dumping questionnaires were sent to all known producers of DBM in these countries. However, no responses were received and thus no information was available to the Commission's services on sales prices and costs of production for DBM in Canada and Brazil. Therefore, no further consideration could be given to the use of Brazil and Canada as analogue countries.
- (27) It was therefore concluded that Turkey was an appropriate analogue country for the purpose of establishing the normal value.

Normal value

- (28) In accordance with Article 2(4) of the basic Regulation, it was considered whether sufficient domestic sales of the product concerned had been made by the producer in Turkey in the ordinary course of trade. As the volume of profitable transactions was higher than 80 %, and the weighted average price was above the cost of production plus selling, general and administrative costs, normal value was established on the basis of the weighted average prices actually paid for sales of the product concerned on the domestic Turkish market. In accordance with Article 18 of the basic Regulation, and in the absence of any cooperation from Chinese exporters, the weighted average sales price of the Turkish producer was used as there was no information as to the product types imported from the PRC into the Community and no information was available that suggested that the product mix of Chinese exports to the Community and Turkish domestic sales was substantially different.

Export price

- (29) Given the lack of cooperation from the Chinese exporters, the export price had to be based on facts available in accordance with Article 18 of the basic Regulation. Eurostat figures were chosen as the appropriate basis for establishing the export price. The Eurostat average price levels were confirmed by reference to information obtained from the one cooperating user.

Comparison

- (30) The weighted average normal value was compared to the weighted average export price of DBM, in accordance with Article 2(11) of the basic Regulation, both at ex-works level.
- (31) For the purpose of ensuring a fair comparison between normal value and export price, account was taken for differences in factors affecting price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for inland and ocean freight, insurance, handling, loading and ancillary costs.
- (32) In the previous investigation it was accepted that access to raw materials was easier in the PRC than in Turkey. As no information was submitted to indicate that this situation had changed, an allowance was granted in order to take into account the difference in extraction rates between the two countries. The same adjustment to the normal value was applied as in the previous investigation, i.e. a reduction of the normal value corresponding to 20 % of the extraction costs found for the cooperating Turkish producer.
- (33) Furthermore, as in the previous investigations, it was considered that the purity of the PRC raw material was higher than that of the Turkish raw material. In the absence of any information submitted indicating any change in this respect, an adjustment corresponding to 25 % of the cost of manufacturing found for the cooperating Turkish producer was therefore made to take account of this difference.

Dumping margin

- (34) The comparison of normal value and export price showed the existence of dumping, the dumping margin being equal to the amount by which normal value, so established, exceeded the price for export to the Community. The dumping margin found, as a percentage of the cif Community-frontier import price, was in the order of 35 %.

3. Developments of imports should measures be repealed*Preliminary remarks*

- (35) 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 any Chinese exporting producer and as little public information about the Chinese DBM industry was available, the conclusions below rely mainly on facts available, namely the market research information submitted by the applicant producers or found during the investigation and deemed reliable, together with data from Eurostat, the Japan Trade Statistics and the United States bureau of the Census.

Chinese production capacity

- (36) 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 million tonnes. The total Chinese production capacity for the product concerned is estimated at around 3,5 million tonnes per year, whereas the Chinese domestic consumption is estimated at some 1,2 to 1,5 million tonnes and exports of around one million tonnes per year. This indicates that the Chinese production could be rapidly increased further by Chinese exporters.

Chinese export prices to the Community

- (37) According to Eurostat figures, the export price of Chinese DBM to the Community has dropped by 10 % between 2000 and the IP, whereas measures were in force. The average export price of DBM nevertheless remained above the minimum import price imposed.

Exports to third countries

- (38) Japan and the USA were two of the main export markets of China for DBM during the period considered.
- (39) Between 2000 and the IP, prices of Chinese exports to Japan fell by approximately 7 %, from Yen 20 054 per tonne to Yen 19 513 per tonne, while quantities remained stable overall between 2000 and the IP, at around 270 000 tonnes. The export prices to Japan, expressed in euro, were EUR 202 per tonne and EUR 145 per tonne respectively in 2000 and during the IP.
- (40) Although still higher than export prices to the EC, the export prices to Japan were thus much closer to export prices to the EC at the end of the period considered than at the beginning. Therefore, during the period considered, exports to the EC became more attractive to Chinese exporters compared to exports to Japan, and Chinese exporters have had an incentive to export larger volumes to the EC.

(41) Between 2000 and the IP, prices of Chinese exports to the United States of America (USA) increased considerably, from USD 129 per tonne to USD 208 per tonne during the IP, which corresponds to EUR 140 per tonne and EUR 167 per tonne, respectively.

(42) In respect of this huge increase in export prices to the USA, it has to be noted that during the period considered all US producers of natural DBM stopped gradually their activity, and that Chinese imports of DBM dominated the US market. Indeed, they accounted for around 82 % of the consumption of dead-burned magnesia in the US during the IP.

(43) With comparatively high prices, in particular in view of the higher price level of exports to the USA than to the EC, the US market may thus have become more attractive to Chinese exporters of DBM during the period considered. However, the export quantities of DBM to the USA did not increase overall between the beginning of the period considered and the IP, and remained around 340 000 tonnes per year. Thus, it does not appear likely that Chinese exporters would still increase significantly their volumes of exports of DBM to the USA in the near future.

(44) In any event, in view of the significant spare capacity of the producers in the PRC, it is unlikely that third countries could absorb an increase of Chinese exports. If measures were allowed to lapse, Chinese exporters would therefore have an incentive to increase exports to the Community.

Likely evolution of Chinese exports to the Community

(45) Bearing in mind that no Chinese exporting producer cooperated with the investigation, the analysis of the evolution of Chinese exports to the Community was based on facts available in accordance with Article 18 of the basic Regulation.

(46) The trends observed during the period considered show big annual variations in average volumes and unit prices of the Chinese exports to the Community.

(47) Concerning prices, as mentioned above, the overall decrease in prices during the period considered was 10 %, but a substantial decrease (– 24 %) has occurred in the last years of the period considered, namely between 2001 and 2004.

(48) As to volumes, it was pointed out above that the Chinese exporters would have an incentive to further increase their export volumes to the EU in view of the available spare capacity and the limited possibilities to increase

exports to third countries. Furthermore, while the overall evolution during the period considered showed an increase of 6 %, considerable increases have occurred in the last years of the period considered (+ 36 % between 2001 and 2004).

(49) As there is no indication that the trends observed during the last years of the period considered would not continue, the information available shows that a further decrease in prices and a further increase in volume are likely to happen. Indeed, the expected further increase of Chinese exports to the EC would probably be made at the expense of the Community industry, in other words at prices at or even below the current dumped price levels in order to gain market share.

(50) Furthermore, it has to be pointed out that, as described in recital 73 of Regulation (EC) No 360/2000, the Chinese export prices and quantities are currently influenced by the export licence system put in place by the Chinese authorities, indicating that, should this system be abolished, the Chinese exporters have the potential to raise their export volume and to lower their export price.

Conclusion on the likelihood of a continuation of dumping

(51) The investigation showed that the Chinese exporters continued their dumping practices during the IP at significant level. Given the fact that China has considerable spare production capacity and that the EC may have become a more attractive market for Chinese exporters than in the past as compared to other markets, there is a strong likelihood that dumping, at the very least at similar levels, would continue if the existing measures were repealed. Moreover, there is a likelihood that the volume of dumped imports would significantly increase and that their price would decrease if existing measures were repealed.

D. DEFINITION OF THE COMMUNITY INDUSTRY

(52) During the IP there were five producers of DBM in the Community. The investigation established that the three applicant and fully cooperating Community producers represented around 55 % of the Community production of DBM and, therefore, constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(53) One producer did not cooperate, but did also not oppose the investigation. It was shown that this producer is a completely downstream integrated producer, using its output of DBM exclusively for internal consumption.

- (54) Another producer was known to the Commission and was contacted in the framework of this proceeding. This company did not express its support or oppose the proceeding.

destined for captive use are not exposed to direct competition with imports. By contrast, production destined for free market sales was found to be in direct competition with imports of the product concerned.

E. DETERMINATION OF THE RELEVANT COMMUNITY MARKET

- (55) In order to establish whether or not the Community industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Community industry, it was examined whether and to what extent the subsequent use of the Community industry's production of the like product had to be taken into account in the analysis.
- (56) DBM is used as an input in the production of refractories within the same companies, or is sold as such to a third party, related or not.
- (57) For the purpose of this investigation, captive use was defined as occurring when production was delivered within the same group of companies for further downstream processing. In situations of captive use, sales or transfer of costs were made at transfer value not set according to market conditions or were made to a company which did not have a free choice of supplier. Consequently, captive use had to be analysed at the level of produced quantities and the proportion of total sales it represented. All other situations were considered as free market sales.
- (58) The distinction between the captive and the free market is relevant for the injury analysis because products

- (59) In order to provide as complete a picture as possible of the situation of the Community industry, data have been obtained and analysed for the entire DBM activity and it was subsequently determined whether the production was destined for captive use or for the free market.
- (60) On the basis of the investigation, it was found that certain economic indicators related to the Community industry could reasonably be examined by referring to the whole activity, i.e. for both captive use and free market sales. Indeed, production, production capacity and capacity utilisation, cash flow, investments, ability to raise capital, stocks, employment, labour costs and productivity depend upon the whole activity, regardless of whether the product is transferred downstream within a group of companies for further processing or whether it is sold on the free market.
- (61) The other economic indicators related to the Community industry were analysed and evaluated referring to the situation prevailing on the free market, in particular where measurable market conditions exist and where transactions are made under normal market conditions implying free choice of supplier: sales volume and sales prices on the Community market, export volume and prices. In this respect, consumption, market shares, growth as well as profitability and return on investment were determined on the basis of the free market sales.

F. SITUATION IN THE COMMUNITY MARKET

1. Consumption in the Community market

- (62) Community consumption was based on the combined volume of sales made by the Community industry in the Community, excluding captive use, imports from the PRC and imports from other third countries.
- (63) On this basis, during the period considered, Community consumption increased by 32 %, from 693 145 tonnes in 2000 to 911 672 tonnes in the IP. This was partially due to the recovery of the steel industry.

Table 1 — Community consumption

Community consumption	2000	2001	2002	2003	IP
Free market (tonnes)	693 145	792 575	701 723	817 678	911 672
Index	100	114	101	118	132
Y/Y trend		14	- 13	17	14

Source: Eurostat, verified questionnaire replies of the Community industry and market information provided by the applicant producers.

- (64) For the purpose of completing the information provided for Community consumption on the free market, the consumption for captive use was also calculated, based on verified questionnaire replies of the Community industry and on market information provided by the applicant producers. It was found that the consumption for captive use increased by 12 % during the period considered.

Table 2 — Captive use

Captive use	2000	2001	2002	2003	IP
Quantity (tonnes)	394 191	399 839	404 773	417 495	442 131
Index	100	101	103	106	112
Y/Y trend		1	2	3	6

2. Import from the PRC

Volume and market share

- (65) Volumes imported from the PRC did not follow the same trend as Community consumption. They decreased first by 25 % on average from 2000 to 2002, and then increased between 2002 and the IP by 41 %. Overall, during the period considered imports from the PRC increased by 6 %, from 349 561 to 369 079 tonnes.

Table 3 — Imports from the PRC

Imports from the PRC	2000	2001	2002	2003	IP
Tonnes	349 561	271 147	261 460	351 724	369 079
Index	100	78	75	101	106
Y/Y trend		- 22	- 3	26	5

Source: Eurostat.

- (66) The market share of the Chinese imports, expressed as a percentage of the Community consumption on the free market, decreased from 50 % in 2000 to 40 % in the IP.

Table 4 — Market share of the imports from the PRC

Market share of the imports from the PRC	2000	2001	2002	2003	IP
Percentage of free market	50 %	34 %	37 %	43 %	40 %
Index	100	68	74	85	80
Y/Y trend		- 32	6	11	- 5

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

Price evolution of the imports and undercutting

- (67) The average CIF Community-frontier import price from the PRC increased by 14 % between 2000 and 2002 but decreased sharply between 2002 and the IP, by 22 %. Over the whole period considered, it decreased by 10 % and reached EUR 140 per tonne in the IP.

Table 5 — Average import price from the PRC

Average import price from the PRC	2000	2001	2002	2003	IP
EUR/tonne	156	184	179	138	140
Index	100	118	114	88	90
Y/Y trend		18	- 3	- 26	2

Source: Eurostat.

- (68) The Commission has examined whether the exporting producers in the country concerned undercut the prices of the Community industry during the IP. In order to bring prices to a comparable basis, the Community producer's prices have been adjusted to an ex-works level.
- (69) The undercutting margin found on this basis was 7,6 %.

3. Economic situation of the Community industry*(a) Analysis of the factors pertinent to the entire activity, including captive use***Production, production capacity and capacity utilisation**

- (70) The Community industry's production increased by 11 % during the period considered, following to some extent the trend of the Community consumption. The decrease of the production by three percentage points in 2002 coincided with the contraction of the consumption of DBM in the Community market.

Table 6 — Production volume

Production volume	2000	2001	2002	2003	IP
Index	100	101	98	108	111
Y/Y trend		1	- 3	10	3

Source: Verified questionnaire replies of the Community industry.

- (71) During the period considered, the production capacity of the Community industry first remained stable between 2000 and 2002 and then increased by 3 % between 2002 and the IP.

Table 7 — Production capacity

Production capacity	2000	2001	2002	2003	IP
Index	100	100	100	103	103
Y/Y trend		0	0	3	0

Source: Verified questionnaire replies of the Community industry.

- (72) During the period considered, the capacity utilisation followed the same trend as the Community production and consumption. Capacity utilisation decreased by 2 % between 2000 and 2002 but increased after 2002, so that over the period considered it increased by 7 %.

Table 8 — Capacity utilisation

Capacity utilisation	2000	2001	2002	2003	IP
Index	100	101	98	105	107
Y/Y trend		1	- 3	7	2

Source: Verified questionnaire replies of the Community industry.

Cash flow

- (73) The cash flow fluctuated during the period considered. However, it remained overall at the same level (- 1 %).

Table 9 — Cash flow

Cash flow	2000	2001	2002	2003	IP
Index	100	127	103	127	99
Y/Y trend		27	- 25	25	- 28

Source: Verified questionnaire replies of the Community industry.

Investments and ability to raise capital

- (74) Investments decreased by around 23 % during the period considered. However, they remained significant and represented during the IP about 10 % of the total turnover of the Community industry.

Table 10 — Investments

Investments	2000	2001	2002	2003	IP
Index	100	141	79	59	77
Y/Y trend		41	- 62	- 20	18

Source: Verified questionnaire replies of the Community industry.

- (75) The Community industry was not found to be experiencing difficulties in raising capital during the period considered.

Stocks

- (76) The table below shows that stocks increased significantly during the period considered by 88 %. However, in absolute terms this increase is not significant.

- (77) The ratio of stocks volume to production volume, which attained 4 % in 2000, increased to around 7 % in the IP.

Table 11 — Stocks

Stock volumes	2000	2001	2002	2003	IP
Index	100	137	137	146	188
Y/Y trend		37	0	9	42

Source: Verified questionnaire replies of the Community industry.

Employment, productivity and labour cost

- (78) After an increase of 8 % between 2000 and 2002, employment decreased in 2003 and in the IP. Overall, it decreased by 4 % during the period considered.

Table 12 — Employment

Number of employees	2000	2001	2002	2003	IP
Index	100	106	108	104	96
Y/Y trend		6	2	- 4	- 8

Source: Verified questionnaire replies of the Community industry.

- (79) Against the background of the increase in production and the decrease in employment, productivity increased during the period considered by 15 %.

Table 13 — Productivity

Productivity (tonnes/employee)	2000	2001	2002	2003	IP
Index	100	96	91	104	115
Y/Y trend		- 4	- 5	13	11

Source: Verified questionnaire replies of the Community industry.

- (80) During the period considered the labour costs of the Community industry gradually increased. The total increase between 2000 and the IP was 32 %.

Table 14 — Wages

Wages	2000	2001	2002	2003	IP
Index	100	106	111	118	132
Y/Y trend		6	5	7	14

Source: Verified questionnaire replies of the Community industry.

(b) Analysis of the factors pertinent for the free-market activity

Sales volume, captive use and sales prices

- (81) The Community industry's sales to unrelated customers on the Community market decreased by 9 % between 2000 and 2003, but increased during the IP, so that it overall increased by 3 % during the period considered.

Table 15 — Community industry's sales to unrelated parties

Community industry's sales to unrelated parties	2000	2001	2002	2003	IP
Index	100	91	91	91	103
Y/Y trend		- 9	0	0	12

Source: Verified questionnaire replies of the Community industry.

- (82) During the period considered the average sales prices prevailing on the free Community market of DBM charged by the Community industry gradually increased. The total increase between 2000 and the IP was 25 %.

Table 16 — Community industry's sales price

Community industry's sales price	2000	2001	2002	2003	IP
Index	100	112	117	119	125
Y/Y trend		12	5	2	6

Source: Verified questionnaire replies of the Community industry.

Market share

- (83) The overall market share held by the Community industry decreased from 26 % in 2000 to 20 % in the IP.

Table 17 — Market share of the Community industry's sales

Market share of the Community industry's sales	2000	2001	2002	2003	IP
Percentage of free market	26 %	21 %	23 %	20 %	20 %
Index	100	80	90	77	78
Y/Y trend		- 20	10	- 13	1

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

Growth

- (84) Whilst Community consumption increased by 32 % during the period considered, the volume of Community industry sales on the free market increased by only 3 %, and the Community industry market share on the free market decreased by 6 %. Thus, the growing trend of the Community consumption was not followed by a corresponding increase in Community industry sales.

Profitability and return on investments

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

Table 18 — Profitability

Profitability	2000	2001	2002	2003	IP
Percentage of net sales value	– 3,1 %	0 %	3,9 %	8,4 %	11,4 %

Source: Verified questionnaire replies of the Community industry.

- (86) The Community industry's profitability followed the same trend as Community industry sales prices. After a loss in 2000 and a break even year with no profit or loss in 2001, the Community industry made profit in 2002 and in the following years. The profitability then increased from 3,9 % in 2002 to 11,4 % in the IP. This was mainly due to a switch to the production of products with a higher added value. Over the period considered, the average profit made by the Community industry was 4,5 %.

- (87) Return on investments, expressed as profits/losses in relation to the net book value of investments, followed the same trend as the profitability.

Table 19 — Return on investments

Return on investments	2000	2001	2002	2003	IP
%	– 2,9 %	0 %	3,2 %	7,8 %	11,5 %
Index	– 100	– 1	114	275	403
Y/Y trend		99	115	161	128

Source: Verified questionnaire replies of the Community industry.

4. Effect of other factors

Export activity of the Community industry

- (88) The Community industry exports of DBM fluctuated during the period considered. However, overall, they remained at the same level in the IP as in 2000 (slight decrease of 1 %). These exports still amounted to around 40 % of the total production of the Community industry during the IP.

Table 20 — Exports of the Community industry

Exports of the Community industry	2000	2001	2002	2003	IP
Index	100	104	95	113	99
Y/Y trend		4	– 9	18	– 13

Source: Verified questionnaire replies of the Community industry.

Import volumes and prices from other third countries

- (89) Import volumes of DBM into the Community from countries other than the PRC developed as follows:

Table 21 — Imports from other third countries

Tonnes	2000	2001	2002	2003	IP
Australia	49 032	66 582	42 599	68 090	63 043
North Korea	26 660	71 385	36 614	38 245	35 172
Turkey	43 625	40 463	33 446	22 625	42 763
Brazil	31 831	25 916	25 872	25 610	39 017
Russia	2 520	12 928	8 107	9 773	24 380
South Korea	0	1 528	1 202	1 879	4 893
All others	10 376	139 240	129 401	136 807	149 284
Total third countries	164 044	358 042	277 240	303 027	358 552
Index	100	218	169	185	219
Y/Y trend		118	– 49	16	34

Source: Eurostat and market information provided by the applicant producers.

- (90) The total import volumes of DBM from third countries other than the PRC more than doubled during the period considered, increasing from 164 044 tonnes in 2000 to 358 552 tonnes in the IP. The major exporters to the Community have been Australia, North Korea, Turkey, Brazil, Russia and South Korea.
- (91) The market share of imports originating in the third countries other than the PRC increased by 15,6 percentage points during the period considered and represented 39,3 %.

Table 22 — Market share of imports from other third countries

Market share of imports from other third countries	2000	2001	2002	2003	IP
Percentage of free market	23,7 %	45,2 %	39,5 %	37,1 %	39,3 %
Index	100	191	167	157	166
Y/Y trend		91	– 24	– 10	9

Source: Eurostat and market information provided by the applicant producers.

- (92) The average import prices from other third countries were higher than those of the Community industry during the IP except the import prices from North Korea, Russia and South Korea. It has to be noted that imports of the product concerned from those three countries represented only 8,9 % of all imports to the Community during the period considered, with a cumulated market share in the Community of 7,1 %, compared to the market share of 40 % of the PRC.

Table 23 — Imports into the Community from other third countries — prices

Imports into the Community from other third countries (EUR)	2000	2001	2002	2003	IP
Australia	235	228	225	213	183
North Korea	111	128	128	109	128
Turkey	164	181	184	160	169
Brazil	182	180	200	201	188
Russia	122	132	133	119	114
South Korea	N/A	139	154	126	132
Others	178	223	186	196	229

Source: Eurostat.

- (93) On the basis of the above, it is considered that imports of the product concerned from other third countries did not have any significant impact on the economic situation of the Community industry during the period considered.
- (96) In view of the tentative recovery of the Community industry, 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.

5. Conclusion on the situation of the Community industry

- (94) The measures in force have led to a partial recovery of the Community industry since 2000. In parallel to an increase in the total Community consumption, the Community's industry managed to increase the sales volumes and to raise the prices. Economic factors such as production, production capacity and capacity utilisation, profitability, return on investments and productivity also showed a positive development. These indicators demonstrate that the Community industry made efforts to improve its competitiveness with some success: Community industry sales in the Community have been profitable since 2002.
- (95) On the other hand, other indicators showed a negative development: market share of the Community industry on the free market and investments decreased, whereas stocks, unit cost of production and labour costs increased. It can nevertheless be concluded that, overall, the situation of the Community industry has substantially improved during the period considered, even if the recovery found is partial. Indeed, this recovery of the Community industry remains vulnerable, *inter alia*, as a result of the increasing price pressure by dumped imports from the PRC.
- (97) With regard to the likely effect on the situation of the Community industry should the measures in force expire, a number of factors were taken into consideration together with the elements summarised above.
- (98) 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, except Russia, North Korea and South Korea, were higher than Community industry's sales prices during the period considered, while the average price of dumped Chinese imports decreased by 10 %.
- (99) As regards the relatively low prices of imports from Russia, North Korea and South Korea, their average export prices to the EC decreased less in proportion than those of Chinese exports to the EC. Furthermore, the volumes imported from these countries remained very low compared with Chinese imports. The cumulated market share of Russia, North Korea and South Korea was 7,1 % during the IP, *i.e.* less than a fifth of the market share of the PRC. Therefore, during the IP the economic effect of Chinese imports on the Community DBM market by far outweighed the effect of imports from Russia, North Korea and South Korea, and nothing indicates that this will change in the future.

G. LIKELIHOOD OF RECURRENCE OF INJURY

(100) As already described in more detail in recitals 45 to 50, if the anti-dumping measures were allowed to expire, it is likely that imports at dumped prices of the product concerned from the PRC would increase and prices would decrease for the following reasons:

— the PRC has considerable spare production capacity and has the largest magnesite ore resources in the world,

— the trends of prices and volumes during the period considered already show a likely further decrease in prices and increase in volume,

— the prices which Chinese exporters might charge in the absence of anti-dumping measures are potentially very low if it is considered that they include the export licence fee,

— the Community market is attractive in terms of volume, and, since exports to third countries are unlikely to increase to a significant extent, Chinese exporters would likely, if the current measures were allowed to expire, attempt to increase their market share in the EC by further decreasing their export price.

(101) It can be concluded that the considerable volume of Chinese imports at low and decreasing prices have exerted an increasing pressure on the Community DBM market, which would in all likelihood continue to intensify, should the anti-dumping measures lapse, as import prices from the PRC would likely decrease whilst volumes of export would rise. The surge of imports from the PRC would very likely result in a further decrease in the Community industry's market share, and given the parallel evolution of the Community industry sales prices and profitability during the period considered, the increased pressure on prices would almost certainly result in a decrease in the Community industry's profit. The other indicators would most likely also develop negatively once the Community industry loses sales and faces substantially decreasing prices.

(102) Furthermore, there does not appear to be other factors likely to cause injury to the Community industry. Imports from other countries were either at higher prices than those from the PRC, or the volumes

concerned were much smaller, and there is no indication that this would change in the future.

(103) 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 caused by the dumped imports.

H. COMMUNITY INTEREST

1. Introduction

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

(105) In order to assess the likely impact of a continuation or non-continuation of the measures, the Commission requested information from all interested parties mentioned above. The Commission sent questionnaires to 18 importers and 17 users of the product concerned. No importers replied to the questionnaires, even though two of them made written representations. As to the users, one of them partially replied to the questionnaire.

(106) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, it should be noted that the present investigation is a second expiry review, thus analysing a situation in which anti-dumping measures are already in place. Consequently, the timing and nature of the present investigation allows the assessment of any undue negative impact the current anti-dumping measures may have had in the past on the parties concerned.

(107) On this basis it was examined, whether, despite the conclusions on continuation of dumping and likelihood of recurrence of injury, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. Interests of the Community industry

- (108) It is recalled that it has been established that without maintaining the anti-dumping measures, dumping is likely to continue with a high and increasing dumping margin, resulting in a deterioration of the situation of the Community industry, which is still not in a stable, fully recovered condition. On the other hand, continuation of the measures should help the Community industry to recover fully and avoid further injury. Furthermore, the efforts made by the Community industry to rationalise its production and enhance its competitiveness, and the profit made by the Community industry in the last three years of the period considered, show that the Community industry is viable and competitive.
- (109) Given the above, it appears necessary to prolong the existing measures in order to avoid the adverse effects of dumped imports, which could endanger the recovery process of the Community industry and ultimately its very existence, and consequently a number of jobs. It has also to be considered that if the Community industry disappears, there will also be a negative impact on the downstream industry, since the latter will see a significant reduction in its choice of suppliers.

3. Interests of importers

- (110) As stated above, none of the unrelated importers replied to the questionnaire sent by the Commission. The lack of cooperation is in itself an indication that this sector did not suffer any substantial negative effect on its economic situation as a result of the imposition of measures. This is confirmed by the fact that the importers continued to trade the product concerned in significant volumes, even raising the volume imported during the period considered.
- (111) It is therefore concluded that the economic situation of the importers of the product concerned has not been negatively influenced materially by the imposition of the anti-dumping measures currently in force. On the same grounds, it is also unlikely that a continuation of the measures would lead to a deterioration of their economic situation in the future.

4. Interests of users

- (112) The users of the product concerned, i.e. the downstream industry, are mainly the refractories' producers. As stated above, only one out of the 17 users to which the questionnaire was sent by the Commission's services replied, and only partially. In the same way as for the importers, the low level of cooperation is in itself an indication that this sector did not suffer any substantial negative effect on its economic situation as a result of the measures. Although the representativeness of the cooperating company for the downstream industry is limited, since it purchased less than 5 % of the total DBM imported

from the PRC during the IP, the impact of the measures in force on its situation was evaluated.

- (113) In this respect, the investigation established that the cooperating user continued to import DBM originating from the PRC in spite of the measures in force. These measures therefore did not constitute a deterrent for the producers of refractories leading them to change their sources of supply. While DBM constitutes a non negligible, albeit small, part of the cost of production of refractories, the Chinese import prices were still comparatively low, and they even decreased on average during the period considered. Thus, it can be concluded that the anti-dumping measures had no significant negative influence on the cost situation and on the profitability of the users of the product concerned.
- (114) The cooperating user submitted that, although on the short term maintaining the anti-dumping measures would not have a significant influence on its situation, on the medium or long term it could lead to more and more refractories being produced outside the EC and imported into the EC instead of the raw material, DBM.
- (115) In this respect, it has to be reminded that, as shown above, the result of the anti-dumping measures in force has not been to close the Community market to imports of DBM, but rather to combat the unfair trade practices and to remedy to some extent the distorting effects of dumped imports. Ensuring a level playing field for the Community industry of DBM also guarantees a higher degree of competition between various suppliers of DBM, including Chinese exporters of DBM, on the EC market.
- (116) Moreover, it was found that exports from the PRC were made at higher prices to some other major markets, including the US, than to the Community. The measures therefore do not appear to have caused the import prices into the Community to rise above the import prices to other third countries. The claim that the continuation of anti-dumping measures would affect competitiveness on other markets was therefore rejected.
- (117) It was therefore concluded that, if the measures were maintained at the same level, this would not imply any deterioration of the situation of the users.

5. Conclusion on Community interest

- (118) The investigation has shown that the existing anti-dumping measures have allowed the Community industry to recover to a certain extent. If measures were allowed to lapse, this would endanger the recovery process, and possibly lead to the disappearance of the Community industry. Therefore, the continuation of measures is in the interest of the Community industry.

(119) Furthermore, in the past, the existing measures appeared not to have any significant negative effects on the economic situation of users and importers. Any price increase, if at all, for users resulting from the imposition of anti-dumping measures, on the basis of the information collected during the current investigation, does not appear to be disproportionate when compared to the benefit to the Community industry achieved by the removal of the trade distortion caused by the dumped imports, as well as to the benefit for users of continued competition between different suppliers of DBM on the EC market. Therefore, it is concluded that there are no compelling reasons against the prolongation of the existing anti-dumping measures.

I. ANTI-DUMPING MEASURES

(120) All parties concerned have been informed of the essential facts and considerations on the basis of which the maintenance of the existing measures is proposed. They have been granted a period within which to make representations subsequent to disclosures. No comments were received which were such as to change the above conclusions.

(121) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the variable anti-dumping duties in combination with a minimum price of EUR 120 per tonne on imports of DBM originating in the PRC imposed by Regulation (EC) No 360/2000, should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of dead-burned magnesias falling within CN code 2519 90 30 originating in the People's Republic of China.

2. The amount of the duty shall be

(a) the difference between the minimum import price of EUR 120 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 A439).

(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 120 per tonne (Taric additional code A439).

(c) equal to an *ad valorem* duty of 63,3 % in all other cases not falling under subparagraph (a) and (b) above (Taric additional code A999).

3. 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.

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

Article 2

This Regulation shall enter into force on the day following 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, 5 May 2006.

For the Council
The President
K.-H. GRASSER

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 402/2006 (OJ L 70, 9.3.2006, p. 35).