COMMISSION REGULATION (EEC) No 2800/92

of 25 September 1992

imposing a provisional anti-dumping duty on imports of magnesium oxide 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 magnesium oxide, commonly called caustic magnesite, falling within CN codes 2519 90 10 and ex 2519 90 90, originating in the People's Republic of China.

During the investigation it had become evident that the product imported under CN code 2519 90 10 was fused magnesia. The investigation has identified that caustic magnesite is imported under CN code ex 2519 90 90.

(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 caustic magnesite, replied to the questionnaires. 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, (Llaoning 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 caustic 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 55 % of exports of caustic 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.

Four 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 Community importers which cooperated accounted for approximately 56 % of imports of caustic 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,

— Magnomin SA, Thessaloniki, Greece,

— Magnesitas Navarras, Pamplona, Spain,

— Magnesitas De Rublan, Lugo, Spain;

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 279, 26. 10. 1991.

(b) *Importers into the Community:*

— Lehmann & Voss, Hamburg, Germany,

— Brown & Gillmer, Dublin, Ireland,

— Van Mannekus, Rotterdam, The Netherlands,

— N. Geurtsen, Hilversum, The Netherlands,

— GBC Ltd, Banstead, United Kingdom,

— Colin Stewart Minchem, Winsford, United Kingdom.

(7) The investigation of dumping covered the period 1 July 1990 to 30 June 1991 (the investigation period).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(8) The product covered by this proceeding is natural caustic magnesite hereinafter referred to as caustic magnesite. Magnesite is a naturally occurring magnesium carbonate. To produce caustic magnesite the ore is mined, crushed, sorted and then burnt in a kiln at temperatures of 700 to 1 000 °C. Caustic magnesite has a magnesia content ranging from about 80 to 98 % MgO (magnesium oxide). The main impurities 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). Caustic magnesite is used in agriculture as an animal feed or as a fertilizer, in construction it is used for flooring and insulating boards and in industry its main application is in pulp and paper production.

2. Like product

(9) 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 caustic 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.

(10) In this respect, the Commission has established that all caustic 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 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 caustic magnesite production in the People's Republic of China is unique in terms of the methods and processes used in manufacture and the chemical and physical characteristics of the magnesite.

(11) Caustic 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 caustic magnesite into a number of different like products. The boundary between the grades is blurred by overlapping usage since consumers do use, for idential 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 caustic 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 use in agriculture, in construction and in industry regardless of its source. Differences in the cost of production of different grades have no bearing on the end product as such and have been taken into account in the construction of normal value (see recital 17).

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

C. DUMPING

1. Normal value

(13) In order to establish whether imports of caustic 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 Austria. The complainant also suggested that any other country producing caustic magnesite would be an appropriate reference country.

Chinese exporters made known their objections to any reference country, arguing that no like product existed. For the reasons given above, this objection has, for the purposes of provisional findings, been rejected.

In view of the more comparable levels of economic development in India, Brazil and China, contact was made with a Brazilian and an Indian company but only Tamilnadu Magnesite Ltd in India duly completed the Commission's questionnaire. However, for company specific reasons, it has proved impossible to arrange a verification visit to Tamilnadu Magnesite Ltd before September 1992. For the purpose of definitive measures it is proposed to use India as a reference country.

(14) In order not to delay unduly the proceeding, the Commission has based normal value on information from Turkey concerning deadburned magnesite, obtained as part of a current anti-dumping proceeding (1). This is considered an appropriate course of action as the processing of the magnesite up to and after the burning stage is basically the same for both deadburned and caustic magnesite. The domestic sales of the Turkish producer of caustic magnesite were not considered to be sufficiently large to be representative in relation to the Chinese exports.

(15) In the proceeding concerning deadburned magnesite, 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 10), 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.

(1) OJ No C 276, 23. 10. 1991.

(16) 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 magnesits 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.

(17) For each grade of deadburned magnesite the constructed value was determined by adding together 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 benefication (2) 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.

(18) A reasonable profit margin was established on the basis of the information available concerning the profit requirements of the Turkish deadburned

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

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**

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

D. COMPARISON

(20) 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.

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 the normal value, adjustments were made on the basis of the data obtained 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 the normal value for deadburned magnesite to establish the full range of MgO grades by taking into account the cost of production differences by grade experienced by the Turkish producer.

Secondly, to achieve a constructed normal value for caustic magnesite account was taken of the fact that burning costs for caustic magnesite are not as high as those incurred to produce deadburned magnesite. The difference between the burning costs for deadburned magnesite and for caustic magnesite was identified as being equal to 23 % of the cost of production for deadburned magnesite. A 23 % adjustment to the cost of production to allow for the lower fuel costs was therefore made.

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

(21) The Chinese exporters claimed that Chinese caustic magnestic, 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 and because of deterioration during transport and storage.

The Commission has not found evidence of price differentials between Turkish and Chinese caustic magnesite as it has not established that the Chinese product is substandard because of chemical impurities or that it deteriorates during transport.

The Commission does not accept that the existence of price differentials caused by these alleged differences has been demonstrated. Therefore, in accordance with Article 2 (9) (a) these requests, have, for the purpose of provisional findings, been rejected.

E. DUMPING MARGIN

(22) 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 caustic 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 of the cif value of the imports concerned it is ECU 34 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*

(23) On the basis of the Eurostat data shown under CN code 2519 90 90 imports originating in the People's

Republic of China rose from 72 000 tonnes in 1988 to over 120 000 tonnes during the investigation period, making China by far the largest exporter of caustic magnesite to the Community.

(b) *Market share*

(24) In calculating total consumption of caustic 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 90. This total was adjusted for re-exports from the Community. Total consumption is estimated as being 341 000 tonnes in 1988 and 368 000 tonnes in the investigation period. On this basis the Chinese exporters market share has risen substantially from 21 % in 1988 to 32 % during the investigation period. This increase should be viewed in the light of an increase in the size of the market of 8 % between 1988 and the investigation period, at a time when imports from China increased by 67 %.

(c) *Prices*

(25) As regards price erosion, the Eurostat data shows that Chinese exporters reduced their prices by 20 % 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 was at a price lower than that of the Community producers.

The price undercutting during the investigation period was 37,7 % based on Community producers' sales prices.

2. Factors relating to the state of the Community industry

(a) *Production*

(26) Community production of caustic magnesite during the investigation period was 92 % of its 1988 level.

(b) *Capacity, capacity utilization*

(27) For the calculation of capacity utilization the Commission has thus 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 77 % in 1988 to 67 % during the investigation period.

(c) *Stocks*

(28) Stock levels fell by 17 % between 1988 and the investigation period.

(d) *Sales and market share*

(29) Community producers' sales quantity on the Community market fell by 9 % between 1988 and the investigation period.

Community producers' market share fell from 53 % in 1988 to 45 % in the investigation period, at a time when the market was increasing in size (see recital 24).

(e) *Prices*

(30) On average prices decreased by 13 % between 1988 and the reference period. This reflects the fact that Community producers tried to match dumped Chinese prices in an attempt to maintain market share.

(f) *Profits*

(31) The financial results achieved by Community producers have deteriorated since 1988. During the investigation period the Community producers were incurring losses or substantially reduced returns on sales.

(g) *Employment*

(32) With regard to the employment situation in the Community industry, employment fell by 13 % between 1988 and the investigation period.

3. Conclusion

(33) In view of the fall in production, the decline in capacity utilization, the fall in sales quantities, the loss of market share 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

(34) 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 caustic 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.

(35) The Commission found price to be the most important factor for customers in determining their sources 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

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

Calculating market size on the same basis as for China the North Korean market share was 8 % 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 42).

(37) The Chinese exporters have suggested that any injury experienced by Community producers relating to grades over 91 % MgO cannot be caused by imports from China. They argue that, in general, high MgO grades over 91 % 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, the like product comprises all grades, and grades overlap in their use (see recital 11). 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.

(38) The Chinese exporters, some importers and some end-users claim that the Chinese product and the Community product applications are different. In particular, certain pulp and paper producers and artificial fertilizer producers can only use Chinese magnesite in their production processes because of its particular chemical structure. The end-users also argue that the caustic magnesite currently supplied by Community producers if used to produce paper and liquid fertilizer generated deposits which require additional treatment to remove.

The Commission accepts that due to low-priced imports of caustic magnesite originating in China certain pulp and paper producers and artificial fertilizer producers have adapted their manufacturing process so as to use Chinese magnesite and are, therefore, no longer customers of the Community industry.

In this respect the Commission notes firstly, that the Community industry is a potential supplier of all specifications of caustic magnesite. 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.

Companies can continue to purchase caustic magnesite from their current suppliers in China, at fair prices, or they can buy a product with a comparable chemical specification from Community or other producers.

(39) The Chinese exporters have argued that any injury experienced by the Community industry is caused by the inefficiency of the Community industry itself. The Commission cannot accept this argument since it contradicts the evidence available to the Commission which indicated that following modernization programmes, the existing Community producers are, in general, as efficient as their counterparts anywhere in the world.

3. Conclusion

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

H. COMMUNITY INTEREST

(41) 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 caustic 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 subcontractors, reducing stock levels, increasing efficiency and upgrading production facilities.

The Commission's view is that it would not be in the Community 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.

(42) 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-priced imports, above all from North Korea.

The Commission has considered the likely impact of these measures on the operation of the market for caustic magnesite. It has found that the Chinese exporters are the market price leaders in that other 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 exporters, 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.

(43) The second argument put forward by the Chinese exporters was that it is not in the Community's interest to increase costs for end users due to anti-dumping measures. Any cost increases would seriously affect the ability of end-users to compete on international markets causing unemployment in these industries.

The Commission cannot accept that this argument has been substantiated. With the possible exception of the pulp and paper industry, caustic magnesite forms a small part of the overall cost for end-users.

Without measures the Community caustic 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 caustic magnesite industry, with the consequent loss of research, development and employment. The end-users 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 interest lies more in sustaining over the long term a viable caustic magnesite industry.

(44) 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 caustic 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

(45) 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 caustic magnesite (on a free-at-Community frontier basis) with the corresponding weighted average production cost of caustic magnesite produced during the same period by the Community industry.

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

(46) 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 magnesium oxide originating in the People's Republic of China falling within CN code ex 2519 90 90 (Taric code 2519 90 90 10).

2. The amount of duty shall be ECU 34 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 subjet to the provision of a security equivalent to the amount of the provisional duty.

5. The proceeding concerning imports originating in the People's Republic of China falling within CN code 2519 90 10 shall be terminated.

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 ANDRIESSEN

Vice-President