I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1347/96

of 2 July 1996

imposing definitive anti-dumping duties on imports of unwrought pure magnesium originating in Russia and Ukraine and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [2], and in particular Article 12 thereof,

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

Whereas:

I. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 2997/95 [3] provisional anti-dumping duty was imposed with effect from 24 December 1995 ('provisional duty Regulation') on imports into the Community of unwrought magnesium falling within CN codes 8104 11 00 and 8104 19 00 and originating in Russia and Ukraine.

By Regulation (EC) No 720/96 [4] the validity of the provisional anti-dumping duty was extended by the Council until 24 June 1996.

II. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping measures the following interested parties submitted comments in writing:

(a) *producers in Russia:*

— Avisma Titanium-Magnesium Works, Berezniki, Perm region ('Avisma'),

Solikamsk Magnesium Works, Solikamsk, Perm region ('Solikamsk');

(b) *producer in Ukraine:*

— Concern Chlorvinil, Kalush, Ivano-Frankovsk region ('Chlorvinil') [5];

(c) *producer in the Community:*

— Péchiney Electrométallurgie;

(d) *producer in the analogue country:*

— Hydro Magnesium, Porsgrunn, Norway;

(e) *importer in the Community:*

— Ayrton & Partners, London, UK;

(f) *user in the Community:*

— Aluminium Norf, Neuss, Germany, ('Alunorf');

(g) *user association in the Community:*

— Arbeitsgemeinschaft der Eisen und Metall verarbeitenden Industrie, Düsseldorf, Germany, ('AVI').

(3) Those parties who so requested were granted an opportunity to be heard by the Commission.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[3] OJ No L 312, 23. 12. 1995, p. 37.
[4] OJ No L 100, 23. 4. 1996, p. 1.

[5] This producer changed its name to 'Oriana' after the period of investigation.

(6) The parties' oral and written comments were considered, and the conclusions altered where deemed appropriate.

(7) Owing to the complexity of the case, in particular the determination of the appropriateness of the analogue country, the investigation overran the normal duration of one year provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88 (hereinafter referred to as the 'basic anti-dumping Regulation').

III. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(8) At the provisional stage unwrought pure and alloyed magnesium, both produced in ingot form, were considered as the product concerned.

(9) After the imposition of provisional duty, the Russian and Ukrainian producers submitted that there were differences between the two above categories of unwrought magnesium, i.e. pure and alloyed, in terms of physical characteristics, production process and end-use, warranting the treatment of these two categories of unwrought magnesium as two distinct products.

(10) The Community industry submitted that the Community institutions should take into account its sales volume and value of pure magnesium in granular form in order to allow a complete assessment of injury.

A. Differences between unwrought pure magnesium and unwrought alloyed magnesium in ingot form

(11) The final stage of the investigation has shown that the two categories of unwrought magnesium are different in their composition, in particular their magnesium content, although the latter is above 90 % for both categories. At the same time the additional alloying agents contained in unwrought alloyed magnesium enhance or even alter the basic physical characteristics of this category as compared to the other category, i.e. unwrought pure magnesium.

On this basis it is concluded that certain differences in physical characteristics between unwrought pure and alloyed magnesium do exist.

(12) As already pointed out in recital 11 of the provisional duty Regulation, it has been established that the two different categories of unwrought magnesium are used in a variety of applications, mainly in aluminium alloying, in steel desulphurization and in die-casting. Although there are applications in which the use of either of the two categories of unwrought magnesium is theoretically possible, in practical terms the use is limited to one or the other category of unwrought magnesium for technical reasons. In particular, the use of unwrought pure magnesium for die-casting is basically impossible whereas the use of certain types of unwrought alloyed magnesium in both steel desulphurization and aluminium alloying is possible with certain technical adjustments. Given also that the two categories of unwrought magnesium are traditionally used only in certain applications, the customers also perceive differences between them.

Thus, the areas of use which are common for unwrought pure and alloyed magnesium in practical and even theoretical terms are very limited and therefore the interchangeability of the two categories of products is also limited.

(13) In the light of the above, it is concluded that unwrought pure and alloyed magnesium have to be considered as two distinct products. As neither the producers in the exporting countries nor the Community industry have produced or sold unwrought alloyed magnesium in any significant quantity, it is concluded that unwrought alloyed magnesium can be excluded from the scope of the present investigation.

Consequently, the analysis of dumping, of injury, of causation between dumping and injury and of Community interest detailed below is exclusively based on information related to unwrought pure magnesium (hereinafter referred to as 'magnesium').

Magnesium, depending on the content of impurities, is classified under the combined nomenclature as 8104 11 00 or 8104 19 00.

B. Magnesium in granular form

(14) At the provisional stage, the Commission for the injury determination considered the volume and value of the Community industry's sales of magnesium in ingot form. Since then, the Community industry has submitted that the Commission should also take into account for the injury determination its sales of magnesium processed in-house from ingot form into magnesium granules, subsequently sold in the open market to independent customers.

It should be noted that magnesium granules are used as such in one of the main applications for magnesium, i.e. for steel desulphurization. The sole remaining Community producer performs the magnesium grinding process in-house. In contrast, the Russian and Ukrainian producers of magnesium sell the latter in ingot form to independent grinders in the Community for processing the ingots into granules.

(15) Given the importance of steel desulphurization as a usage of magnesium and the relative simplicity of the grinding process, it has been concluded that the volume and value of sales of magnesium ingots transformed into magnesium granules should be taken into account, subject to an allowance for grinding costs, in determining the situation of the Community industry.

IV. DUMPING

A. Russia and Ukraine

1. *Normal value*

(16) The Russian producers submitted that the analogue country i.e. Norway, was not an appropriate choice. These producers argued in general terms that given the difference in economic development between Russia and Norway leading to, for example, substantial labour cost differences, the latter could not be used as an analogue country.

The Community industry, on the contrary, submitted that the producer located in Norway was among the most efficient world-wide manufacturers, operating a particularly cost-effective production when compared to the exporting producers concerned.

In respect of this argument, it is noted that the justification for using an analogue country in anti-dumping proceedings involving non-market economy countries is the lack of reliable cost and price information in the non-market economy country concerned. Therefore, it is considered groundless to argue that certain costs prevailing in the non-market economy are lower than in the market economy analogue country and that accordingly adjustments of the normal value determined for the analogue country when applying it to the non-market country should be made. Based on the same reasoning, the Commission does not take into account costs resulting from inefficiencies in for example the use of the workforce, which would result in adjustments in the normal value to the disadvantage of the non-market economy producers, as it appears reasonable to assume that such disadvantages are the result of that form of economic system.

(17) Furthermore, the Russian and Ukrainian producers alleged that Norway did not represent an appropriate choice of analogue country because the producer located in this country would have an interest in the outcome of this proceeding.

As mentioned in recital 68 of the provisional duty Regulation, it has been found that part of this Norwegian producer's field of activity was the Community magnesium market.

The investigation conducted has ensured, however, that the conclusions reached are based on verified and thus reliable cost and sales price information for Norway. On this basis any allegation that the particular interest of the producer in question may have influenced the conclusions of the present investigations are unfounded.

(18) As regards certain allegations made by the Russian and Ukrainian producers related to the reliability of production costs determined for the analogue country producer, it is not considered necessary to address these allegations in detail. They are based on the use of an inconsistent set of exchange rates and on the comparisons of normal values determined in anti-dumping proceedings carried out in the past by the US authorities using different methodologies and ignoring the methodology used by the Commission in order to determine the level of duty at the provisional stage.

(19) Finally, certain allegations were based on the situation of the magnesium operations of the group to which the analogue country producer belonged which also included magnesium operations in Canada. In this respect it should be noted that the determination of the normal value was exclusively based on the situation of the producer located in the analogue country i.e. Norway.

(20) In conclusion, it is maintained that the information collected in respect of the analogue country producer is reliable and is actually supported by information submitted by the Russian and Ukrainian producers.

2. *Export prices*

(21) One Russian producer found, as set out in recital 30 of the provisional duty Regulation, to have sold the product concerned to a related company in Switzerland, and which had omitted to specify this relationship, did not contest after the provisional stage that the relationship existed. However, this producer claimed that it did not know the final destination of its exports and that therefore the sales to this related company should not be considered as sales destined for export to the Community.

This approach cannot be accepted given the relationship between the companies concerned and also taking into account the fact that the Russian company in question did not submit any information linked to the sales to the related party (e.g. shipping documents indicating the actual shipping destination) that would demonstrate that the approach taken at the provisional stage for the determination of export sales and export prices as set out in recitals 30 and 31 of the provisional duty Regulation was incorrect.

(22) The two Russian producers claimed that an amount for commission from their export prices was wrongfully deducted, as this commission was paid to parties located in Russia. The Russian producers submitted that, given the status of Russia as a non-market economy country, any costs incurred there should not be considered.

The information at hand was reviewed, and it is concluded that the deduction concerned should not be made, given the status of this country as a non-market economy. It appears, as argued by the Russian producers, that the commission payments relate to activities in Russia.

(23) The Ukrainian producer submitted that the export price of certain export transactions were wrongfully adjusted by twice deducting an amount for commission.

Based on the information submitted, it was established that the claim of the Ukrainian producer was justified and the calculation was adapted accordingly.

3. *Comparison*

(24) The Russian producers claimed that the production process used by the analogue country producer was partly different from the production process used in Russia, yielding extra costs of production. These claims concerned one specific production step, i.e. the treatment of the feedstock and the production of certain by-products.

(25) With respect to differences in the processing of the feedstock, it was determined that prior to the investigation period, the analogue country producer used two different production processes in order to prepare the feedstock for the production of magnesium. One of the production processes was discontinued well before the beginning of the investigation period. The claims of the Russian producers in respect of differences in the processing of the feedstock related to this discontinued production process. Since this production process was discontinued and did not affect the situation prevailing during the investigation period, it was not considered necessary to address the question raised by the Russian producers.

(26) With respect to certain by-products resulting from the production process, this aspect was examined carefully in order to address the question of possible inherent differences in the efficiency of the production processes used during the investigation period in the analogue country and in the exporting countries.

The following should be noted:

— on the basis of the information available, the electrolysis process (i.e. one of the major production steps in the production of magnesium) of the analogue country producer, given that the structure of the electrolysis cells used by the analogue country producer is inherently less energy-consuming when compared to the electrolysis process used in the exporting countries. In addition, the lifetime of the elctrolysis cells is substantially shorter in the exporting coutries concerned (i.e. around one year against five years in the analogue country),

— the production process used in the exporting countries yields, to a greater extent than the production process performed in the analogue country, certain by-products. From information submitted in the course of the investigation it appears that these by-products are used as inputs in the production of other products in the exporting countries.

(27) On the basis of the above, it has been concluded that the normal value established in the analogue country should be adjusted in order to reflect that the Norwegian production process had a lower yield of by-products while being more energy-efficient. Such an adjustment was done on the basis of electricity prices prevailing in the analogue country and on the basis of an estimate of the prices of the main by-products valued at prices prevailing in the Community adjusted for necessary purification treatment.

4. *Dumping margins*

(28) The Russian producers claimed that the cif Community-border value used in determining the provisional dumping margin should be adapted because of the effects of the enlargement of the Community. They argued that they had exported their products during the investigation period to a port in Finland and as a consequence the export transactions should not be adjusted to bring them to a Community frontier level by adding all relevant costs to reach a cif-Rotterdam level.

The destination of the export sales made by the Russian producers during the investigation period have been verified and it is concluded that the claim is not justified. Indeed, contrary to the claim of the Russian producers, export sales to independent customers were made at a Rotterdam-harbour level in the overwhelming majority of cases. Therefore, the claim of the producers concerned is rejected.

(29) A comparison of the adjusted normal value with the export prices revealed that the ex-national frontier prices of all export transactions from Russia and Ukraine were below normal value. The revised

dumping margins were aggregated for all export transactions and when expressed as a percentage of the total cif Community-border value are as follows:

— Russia: 46,5 %
— Ukraine: 54,5 %.

B. Kazakhstan

(30) The conclusion reached at the provisional stage concerning imports of magnesium originating in Kazakhstan i.e. that imports are de-minimis, was confirmed at the definitive stage. Consequently, no dumping margin has been determined with respect to imports originating in this country.

V. INJURY

A. Volume of Community market, consumption in the Community

(31) The consumption in the Community market for the product concerned was determined based on market research information compiled by a market research organization on the basis of a survey among suppliers and users. The information used does include the consumption of magnesium by companies belonging to the group of the sole remaining producer of the Community industry. It has to be noted that these companies were free to purchase magnesium from whatever supplier and therefore the consumption determined reflects the open market for the product concerned.

The resulting consumption of magnesium in the Community measured in metric tonnes was as follows:

1990	1991	1992	1993
46 000	42 000	47 000	41 000

B. Dumped imports from Russia and Ukraine

1. *Cumulation of imports*

(32) The Ukrainian producer stated that imports originating in Ukraine should not be cumulated with those originating in Russia. The producer mentioned in this context that, unlike the situation with regard to Russia, it had exported neither unwrought alloyed magnesium nor stockpile magnesium.

As far as the argument related to sales of unwrought alloyed magnesium is concerned, reference is made to point III in which the product definition was revised.

(33) As far as the argument about exports of stockpile material is concerned, reference is made to recital 31 of the provisional duty Regulation, where it is stated that export prices and volumes for unwrought magnesium originating in Russia were made on the basis of the transactions of the two cooperating producers which, according to the information submitted by them, have not sold any stockpile material themselves.

(34) On this basis, and taking into account the arguments raised already at the provisional stage (see recitals 43 to 45 of the provisional duty Regulation), it is considered that the cumulation of imports originating in Russia and Ukraine is appropriate.

2. *Volume of imports*

(35) The volume of dumped imports of magnesium originating in Russia and Ukraine, measured in metric tonnes product, show a significant increase from around 2 100 metric tonnes in 1991 to around 5 400 metric tonnes in 1992, ultimately rising to around 9 200 metric tonnes in the investigation period.

(36) On the basis of the total Community consumption, this development corresponds to a rise in market share held by dumped imports from 5 % in 1991 to 11 % in 1992 and to 23 % in the investigation period.

(37) The price level for magnesium for the imports concerned has been determined and the following price trend for the two exporting countries concerned has been established (table given in indexed form, base in 1990:100):

1990	1991	1992	1993
100	86	92	87

These prices were at a consistently low level and undercut those of the Community industry by a substantial margin. A detailed evaluation of the export prices charged during the period of investigation as compared to prices charged by the Community industry at a comparable level of trade, and taking into account where appropriate differences in the quality of the products was made. The prices of all export transactions undercut prices of the Community industry by an average margin of 35 %.

C. Situation of the Community industry

(38) A number of interested parties have pointed out that the Community industry no longer suffers injury as the demand for magnesium has changed since the end of the investigation period, leading to a supply shortage and a considerable increase in prices.

However, the alleged change in demand has occurred in the market for die-casting which essentially uses unwrought alloyed magnesium.

1. *Sales volume and market share of Community industry*

(39) As mentioned in point III B, sales of magnesium ingots of the Community industry were analysed taking into account quantities sold in ingot form as such ('magnesium ingots') and the quantities of ingots attributable to sales in granular form ('magnesium granules').

Total yearly sales volume of the Community industry to unrelated customers in the Community of magnesium ingots and magnesium granules decreased since 1990. From 1991 to 1992 the decrease was almost 40 %. From 1992 to the investigation period more than 10 %, i.e. on an indexed basis from 62 to 53 between 1992 and the investigation period (base 1990:100).

This decrease in sales volume resulted in a decrease in market share of the Community industry from 20 % in 1991 to 11 % in both 1992 and in the investigation period.

(40) If sales of magnesium granules are excluded from the analysis, the following, similar pattern emerges: yearly sales volume of the Community industry to unrelated customers in the Community decreased since 1990. From 1991 to 1992 the decrease was almost 40 %. From 1992 to the investigation period sales fell by around 20 %, i.e. on an indexed basis from 55 to 44 between 1992 and the investigation period (base 1990:100).

This decrease in sales volume resulted in a decrease in market share of the Community industry for sales of magnesium ingots from around 15 % in 1991, to 8 % in 1992 and 7 % in the investigation period.

(41) Finally, if sales transactions to related companies using the product concerned which were free to purchase their raw materials from independent suppliers are also included in the analysis, the total yearly sales volume again shows a decrease since 1990. From 1991 to 1992 the decrease continued and was almost 30 %. From 1992 to the investigation period it was around 10 %, i.e. on an indexed basis from 74 to 69 between 1992 and the investigation period (base 1990:100).

This decrease in sales volume resulted in a development of market share of the Community industry for its total sales of magnesium from around 30 % in 1991, to around 20 % in both 1992 and in the investigation period.

2. *Prices of the Community industry*

(42) The Russian producers argued that the Community industry obtained an increase in its sales prices from 1991 through 1992 into the investigation period.

(43) In this context it must be noted that prices of the Community industry improved from 1991 to the investigation period as a result of a market recovery. This price recovery reflects, as far as its pattern is concerned, world market price fluctuations. From the beginning of the investigation period however, these prices have declined substantially up to the end of the investigation period.

As for the analysis of sales and market share, yearly price trends (in index form with the base 100 in 1990) are shown for:

— sales of magnesium ingots:

1990	1991	1992	1993
100	74	79	92

— sales of magnesium ingots and magnesium granules:

1990	1991	1992	1993
100	76	81	91

— total sales including sales to related customers:

1990	1991	1992	1993
100	75	81	91

(44) Prices within the investigation period decreased by about 6 % between the first quarter and the last quarter for sales of magnesium ingots, by around 8 % when taking account of sales both of magnesium ingots and magnesium granules and also by 8 % if total sales of the Community industry are taken into account. This underlines that prices of the Community industry were under particular pressure during the investigation period.

3. *Other factors*

(45) As far as the financial situation, production, stocks, capacity, capacity utilization and employment are concerned, no new information was received from interested parties after the imposition of provisional measures and no new information is available, therefore the provisional determinations reached concerning these factors are confirmed.

D. Conclusion

(46) In conclusion, the substantial reduction in the Community industry's sales, production and market share, the substantial increase in stock volume and the loss of employment as well as the negative development as far as the financial results are concerned, led to the conclusion, at the definitive stage, that the Community industry has been suffering material injury within the terms of Article 4 (1) of the basic anti-dumping Regulation.

VI. CAUSATION

A. Price situation of the Community industry

(47) The Russian producers argued that their exports had not caused the injury suffered by the Community industry as this industry experienced a negative situation in a time period before their exports gained importance. Furthermore, the Russian producers submitted that their argument was corroborated by the fact that the situation of the Community industry improved in terms of resale prices as imports of magnesium originating in Russia gained importance.

(48) As already mentioned in recital 69 of the provisional duty Regulation, it has been acknowledged that dumped imports were not the sole cause of the injurious situation of the Community industry. Indeed, it was determined that the Community industry has faced negative developments because of a downturn in the market for magnesium triggered by a general downturn in the magnesium-using industries. However, it has also been established that since 1991, imports of magnesium originating in the two exporting countries concerned increased considerably, contrary to the development of consumption in the Community, and have consistently been made at prices undercutting those of the Community industry.

On this basis, it can be concluded that the two developments, a market downturn and the undisputed increase in low-priced imports originating in the two countries concerned, overlap, as do their consequent effects. It was provisionally determined that the appearance of high volumes of dumped imports have jeopardized the recovery of the Community industry after a consolidation of the market and a restructuring programme which took effect toward the end of 1992.

(49) In order to distinguish between the possible effects of these two factors, the pricing pattern of the various suppliers on the Community market has been analyzed. These suppliers are, in decreasing order of market share during the investigation period, Norway (around 16 %), the US (around 16 %) and Canada (around 3 %) apart from the countries concerned by this proceeding and the Community industry.

An analysis of the pricing pattern of these suppliers based on the information received from the producers located in the exporting countries concerned, from the Community industry and based on import statistics for other suppliers, together with market research information revealed that there was a world wide price slump in the years 1991 and 1992. By the middle of 1992 and at the beginning of 1993, the market recovered leading to an increase in sales prices. For imports from Russia and Ukraine, throughout the period from 1990 to the investigation period, these were made at prices consistently and substantially undercutting those of the other main suppliers.

Furthermore, the year-to-year price changes of the various suppliers indicate for all of them an upward price trend in the period of 1992 to the investigation period, in line with a price increase in the world market. On the contrary however, the two exporting countries concerned decreased their prices. The Community industry has not been able to effect price increases to the same extent as those of other third country suppliers. This explains why this industry's market share has remained relatively stable, while the market share of other third country suppliers substantially deteriorated from 1992 to the investigation period.

This indicates that the price increase which resulted from the world market recovery from 1992 to the investigation period was substantially hampered for the Community by the pricing of the exports concerned, which undercut those of the other suppliers substantially, leading to the Community industry having to forego price increases.

(50) Furthermore, it was established that prices of the Community industry deteriorated during the investigation period after having recovered somewhat at the beginning of it. From the first quarter to the last quarter of the investigation period alone prices decreased by between 6 % and 8 %. It was in this period that imports from the countries concerned increased markedly.

B. Sales channels of Russian exporters and of the Community industry

(51) The Russian producers stated that their sales of the product concerned could not have caused injury because these sales in the Community went into other sales channels than those of the Community industry and were destined for other uses. It was claimed that the Russian material was often off-grade material, i.e. magnesium with a higher content of impurities, which was used for steel desulphurization purposes. The Russian producers claimed that there was very little overlap between the channels and uses for their products and for those of the Community industry as the Russian producers did not sell any unwrought alloyed magnesium to, for example, die-casters.

(52) As regards this claim, the following should be noted:

— first, the present investigation deals with products which are very similar, if not identical, in their characteristics and uses. It is considered that for this reason alone, the low-priced sales of the imported products have an impact on the Community industry,

— second, it is undisputed that the market for magnesium is highly transparent with the effect that not only prices realized but even price offers quoted have an impact on the market overall,

— third, the investigation has shown that the Community industry sells magnesium in substantial quantities in the market segment and to customers in which the Russian producers have claimed to be specialized,

— fourth, the investigation has not confirmed that the cooperating Russian producers have sold to any extent any off-grade magnesium. Indeed, the producers themselves claimed that their product was of good quality, a statement confirmed during the investigation by the cooperating importers and user.

C. Other imports

(53) The Russian producers claimed finally that Russian exports had mainly affected the position of other countries' imports.

As already mentioned in recital 68 of the provisional duty Regulation, the market share of imports of magnesium originating in countries other than those covered by the present proceeding actually decreased over the years leading to the investigation period. However, the divergence in the trend of Community and third country market shares does not support the claim that the imports concerned have not caused injury to the Community industry. The Community industry has opted to keep its market position by increasing its prices substantially less than the other suppliers.

D. Purchases by the Community industry of magnesium originating in Russia and Ukraine

(54) It was argued that the sole remaining Community producer had purchased magnesium originating in Russia and Ukraine and had in this respect inflicted injury on itself.

In this respect it was found that the Community producer had not bought any of the product concerned originating from these sources.

E. Conclusion

(55) It is therefore concluded that high-volume, low-priced dumped imports of magnesium originating in Russia and Ukraine, taken in isolation, have caused material injury to the Community industry.

VII. COMMUNITY INTEREST

A. User, Alunorf

1. *Competitive situation*

(56) One magnesium user, Alunorf, submitted information. Notwithstanding the question whether Alunorf was representative of user interests, it was examined whether the user company would be put at a disadvantage compared to competitors located outside the Community by the adoption of anti-dumping measures.

In this respect it was estabished that there are few imports into the Community of the products which the user company and its owners manufacture, indicating that any impact that these companies might face due to competitive advantages gained by competitors located outside the Community and potentially benefiting from low-priced input materials is limited.

2. *Effect on cost of production*

(57) During the investigation period Alunorf produced aluminium-based products containing between 0 and 5 % magnesium. It has been determined that the cost of magnesium as a proportion of the total cost of production were substantially below 3 %. It follows that the impact of price variations in magnesium must be very small.

B. Other users

(58) With respect to other users of magnesium, it was argued that the cost of magnesium represented a significant share of the overall cost of production, with the result that any increase in the cost of this important input would have a negative effect on this industry's competitive situation.

In this respect, it is acknowledged that there might be an effect on this user industry. The anti-dumping measures imposed have therefore been designed to allow the continued presence on the Community market of the suppliers located in the exporting countries.

C. Conclusion

(59) In summary, it is considered that, on balance, it is in the Community interest to impose definitive measures in the present investigation. This view

takes specifically into account the situation of one category of user industry which uses magnesium as its main raw material. The definitive measures proposed ensure that the effects on this part of the user industry will be limited.

VIII. ANTI-DUMPING MEASURES

A. Level of duties

(60) Based on the above conclusions on dumping, injury, causal link and Community interest, it was considered what form and level the anti-dumping measures would have to take in order to remove the trade-distorting effects of injurious dumping and to restore effective competitive conditions on the Community magnesium market.

(61) In the present circumstances the overall loss-making situation of the Community industry of magnesium had to be taken into account as well as the volatility of the market.

(62) Since the level of prices at which the injurious effects of the imports would be removed was higher than the dumping margin of both exporting countries concerned, the dumping margin was used in order to determine the level of measures.

B. Form of duties

(63) Given the material injury suffered by the Community industry in the form of financial losses being the result of a depression of sales prices, the nature of the product and possible price fluctuations resulting from demand for downstream products, a variable duty is considered the most appropriate form of duty in this case.

Taking into account the adjustment made in the determination of the respective normal values at the definitive stage, such variable duties would be based on a minimum price of ECU 2 602 and 2 568 per tonne at a cif Community-border level for imports of magnesium originating in Russia and Ukraine respectively taking into account the differences in the actual export channels used during the investigation period.

C. Undertakings

(64) Having been informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties, the two Russian and the Ukrainian producers offered undertakings concerning their exports of the product concerned to the Community. After examination of these offers, the Commission considered the undertakings as acceptable since they would eliminate the injurious effects of dumping pursuant to Article 10 (2) of the basic anti-dumping Regulation. Furthermore, given the nature of the product and given the particular terms of the undertakings, in particular the fact that these undertakings cover exports of the product concerned for the Community directly invoiced to unrelated importers, it was established that these undertakings could be monitored effectively.

(65) The Commission consulted the Advisory Committee on the acceptance of these undertakings and, since objections were raised, sent a report on these consultations to the Council. In accordance with Articles 9 and 10 (1) of the basic anti-dumping Regulation, the undertakings offered were accepted by Commission Decision 96/422/EC [1].

(66) Notwithstanding the acceptance of the undertakings offered by the Russian and Ukrainian producers, a residual duty should be imposed on imports of the product concerned originating in Russia and Ukraine, in order to underpin the undertakings by avoiding their circumvention. This residual duty should be imposed in the form of a variable duty as discussed above.

IX. COLLECTION OF THE PROVISION DUTIES

(67) In view of the magnitude of the dumping margins found for the exporting producers and in light of the seriousness of the injury, in particular in light of the level of price undercutting and price underselling, it is considered necessary that amounts secured by way of provisional anti-dumping duties for transactions involving the product concerned, i.e. exclusively magnesium at the definitive stage should be definitively collected for all companies, including those from which undertakings have been accepted, at the level of the definitive duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. (a) Definitive anti-dumping duties are hereby imposed on imports of unwrought pure magnesium falling within CN codes 8104 11 00 and ex 8104 19 00 (Taric code 8104 19 00 10) and originating in Russia and Ukraine.

For the purpose of this Regulation unwrought pure magnesium shall be defined as unwrought magnesium unintentionally containing small amounts of other elements as impurities.

[1] See page 32 of this Official Journal.

(b) This Regulation shall not cover unwrought alloyed magnesium which is unwrought magnesium containing more than 3 % by weight of intentionally added alloying elements such as aluminium and zinc.

2. For the product referred to in paragraph 1 (a) originating in Russia, the amount of anti-dumping duty shall be the difference between the minimum import price of ECU 2 602 per metric tonne product and the cif free Community-frontier price in all cases where the cif Community-frontier price per metric tonne product is less than the minimum import price (Taric additional code: 8899) except for imports of the product directly invoiced to an unrelated importer after the entry into force of this Regulation by the following producers located in Russia:

— Avisma Titanium-Magnesium Works, Berezniki, Perm region, (Taric additional code: 8898),

— Solikamsk Magnesium Works, Solikamsk, Perm region, (Taric additional code: 8903),

which shall be exempt from the duty subject to the above conditions pursuant to the acceptance of undertakings by Commission Decision 96/422/EC.

3. For the product referred to in paragraph 1 (a) originating in Ukraine, the amount of anti-dumping duty shall be the difference between the minimum import price of ECU 2,568 per metric tonne product and the cif Community-frontier price in all cases where the cif Community-frontier price per metric tonne product is less than the minimum import price (Taric additional code: 8902) except for imports of the product directly invoiced to an unrelated importer after the entry into force of this Regulation by the following producer located in Ukraine,

— Concern Orianam, Kalush, Ivano-Frankovsk region (Taric additional code: 8901),

which shall be exempt from the duty subject to the above conditions pursuant to the acceptance of an undertaking by Commission Decision 96/422/EEC.

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

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 2997/95 and related to imports of unwrought pure magnesium as defined in Article 1 (1) (a) shall be definitively collected at the duty rate definitively imposed.

Amounts secured in excess of the definitive rate of anti-dumping duty and related to imports of unwrought pure magnesium shall be released.

Amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 2997/95 and related to imports of unwrought alloyed magnesium as defined in Article 1 (1) (b) shall be released.

Article 3

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

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

Done at Brussels, 2 July 1996.

For the Council

The President

D. SPRING