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COUNCIL REGULATION (EC) No 2402/98

of 3 November 1998

imposing a definitive anti-dumping duty on imports of unwrought unalloyed magnesium originating in the People's Republic of China and definitively collecting the provisional duty imposed

(OJ L 298, 7.11.1998, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 2315/2000 of 17 October 2000	L 267	17	20.10.2000
►**M2**	Council Regulation (EC) No 2788/2000 of 18 December 2000	L 324	4	21.12.2000

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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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 Communities [1], and in particular Article 9(4) thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 1002/98 [2] (hereinafter referred to as 'the Provisional Regulation'), imposed a provisional anti-dumping duty on imports into the Community of unwrought pure magnesium originating in the People's Republic of China and falling within CN codes 8104 11 00 and ex 8104 19 00 (TARIC code 8104 19 00*10).

B. SUBSEQUENT PROCEDURE

(2) Further to the imposition of the provisional measures, the exporters and the complainant made written representations. Those parties who so requested were granted an opportunity to be heard by the Commission.

(3) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of the provisional duty. They were also granted a reasonable period within which to make representations subsequent to the disclosure. The parties' comments were considered, and the conclusions altered where deemed appropriate.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(4) The product under consideration is unwrought unalloyed magnesium. Unwrought magnesium is available as either pure, i.e. unalloyed, magnesium containing minor quantities of impurities or as alloyed magnesium with alloying elements such as aluminium and zinc added.

Article 1(1)(b) of the Provisional Regulation made it clear that alloyed magnesium defined as magnesium 'containing more than 3 % by weight of intentionally added alloying elements such as aluminium and zinc' was not covered by the provisional measures. The objective of this provision was to limit the effect of the measures to the product covered by the investigation, i.e. unwrought pure magnesium, while avoiding circumvention of the measures.

However, it has become clear that major sectors of users of unwrought pure magnesium (e.g. the aluminium industry) can in fact use magnesium falling into the above definition of alloyed magnesium. There is a risk, therefore, that circumvention of the measures would take place through the importation of artificially created magnesium alloys containing more than 3 % of alloying elements, which would nevertheless be used as pure magnesium. Such 'alloys' would not correspond to previously established industrial standards and could not be used for any application for which alloyed magnesium is typically

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).
[2] OJ L 142, 14. 5. 1998, p. 24.

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required. Indeed, evidence in the form of offers was received which showed that Chinese parties are already contemplating this type of circumvention.

In this context, it should be noted that all forms of alloyed magnesium used by the downstream industries prior to the imposition of provisional measures in this proceeding were defined by relevant European (Comité européen de normalisation — CEN) or equivalent international industry standards. These alloys have been designed for specific applications and require sophisticated production techniques (having a significant effect on the cost of production) which is clearly not the case with regard to the abovementioned artificially created 'alloys'.

To prevent such circumvention, and to ensure that the measures achieve their intended result it is therefore proposed to specify at the definitive stage in the present proceeding the alloyed magnesium types to which measures will not apply.

A list of the CEN specifications and their international equivalents for these alloyed magnesium types are attached in the Annex to this Regulation.

(5) In the absence of any new arguments concerning the definition of the product under consideration and the like product, the findings set out in recitals 8 to 13 of the Provisional Regulation are hereby confirmed.

D. **DUMPING**

1. **Normal value**

(a) *Utilisation of a reference country*

(6) At the provisional stage, normal value was established by using data in a reference country, i.e. Norway.

The cooperating Chinese exporters commented that the procedure of using a reference country for the determination of normal value is unfair, as it takes no account of costs in the People's Republic of China. They state further that the product concerned is produced in the People's Republic of China under market economy conditions.

It should be noted in this respect that following Council Regulation (EC) No 905/98 of 27 April 1998 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community [1], for anti-dumping investigations initiated after 1 July 1998, it will be possible to establish normal value in the People's Republic of China, providing certain conditions laid down in that Regulation are met.

Since the present proceeding was initiated on 21 August 1997, normal value has still to be established on the basis of data obtained from an analogue country. The request could not, therefore, be accepted.

(b) *Competitiveness of the Norwegian domestic market*

(7) The cooperating Chinese exporters also expressed doubts as to whether the domestic selling prices in Norway, which were used to establish normal value, could be considered as being the result of a competitive market.

According to information obtained during the investigation, it was concluded that Norway is an open market because more than 50 % of Norwegian domestic magnesium consumption is imported and purchased by companies which are not related to Norsk Hydro, i.e. the cooperating producer in the analogue country. This indicates that the Norwegian market and consequently Norsk Hydro's domestic prices are governed by competitive market forces.

(c) *Representativity of domestic sales*

(8) The cooperating Chinese exporters queried the representativity of domestic sales by the analogue country producer to independent customers.

[1] OJ L 128, 30. 4. 1998, p. 18.

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The investigation confirmed that total domestic sales by the analogue country producer in Norway were representative in that they represented substantially more than 5 % of the total quantity of sales of the product concerned originating in the People's Republic of China and sold for export to the European Community.

(d) *Comparative advantage*

(9) The Chinese exporters further argued that their magnesium industry was characterised by large and conveniently located reserves of raw materials, low investment, low labour costs and low costs of production which gave them a comparative advantage which should be taken into account in the determination of normal value.

However, it was found that the producer in Norway had equally good access to raw materials. Furthermore, as it operates on a much larger scale and has continuous investment, it is very unlikely that Chinese magnesium production is more efficient than that in Norway. In any event no information has been found which would indicate the contrary. The assertion that certain costs are cheaper in China is not, as such, considered relevant because those costs cannot be taken into consideration for the determination of normal value for the reasons given in recital 6 above.

The finding of the provisional stage, that the Chinese producers did not enjoy a comparative advantage, was therefore confirmed and no adjustment was granted in this respect.

(e) *Conclusion*

(10) In the absence of further arguments concerning the determination of normal value, the provisional determination is hereby confirmed.

2. **Export price**

(11) In the absence of further arguments concerning the determination of export price, the provisional determination is hereby confirmed.

3. **Comparison between normal value and export price**

(a) *Physical characteristics*

(12) The Chinese cooperating exporters claimed an allowance for physical and quality differences between Chinese and Norwegian magnesium at the provisional stage of the proceeding, although insufficient evidence was provided at that stage to grant such an adjustment.

(13) Following the provisional disclosure the Chinese cooperating exporters indicated that the market value of quality differences due to oxidisation or the fear of receiving oxidised magnesium from China is estimated at around 10-15 %. However, the cooperating exporters were not able to substantiate this quantification as purchasers perceived the risk of oxidisation as relating to all magnesium from China.

The evidence available with regard to this claimed adjustment has been considered.

(i) There is evidence to suggest that oxidisation is more likely on the Chinese magnesium, for example:

— evidence of oxidised magnesium recorded in an inspection report included with a Chinese questionnaire response,

— written comments received from three cooperating importers which indicate that the Pidgeon process, which is used by small-scale producers in the People's Republic of China and accounts for the majority of exports to the European Community, results in a higher amount of oxidised material than the Norsk Hydro (the sole analogue country producer) and Pechiney Electrometallurgie (PEM) (the sole Community producer) production methods,

— evidence of oxidised magnesium in two importers purchase transaction-by-transaction listings,

— physical verification of oxidised magnesium from China at users' premises by members of the Commission services.

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(ii) However, comments were also received with regard to the inappropriateness of such an allowance as follows:

— the complainants mention that Chinese magnesium entering the European Community during the investigation period was generally declared to be of high (99,95 % and above) purity at which level it was not subject to the 5,3 % customs duty and, therefore, it is incompatible that the exporters are now claiming a quality difference for alleged oxidisation which is a physical impurity.

However, they do not specifically dispute the allegation that Chinese material is more subject to oxidation and, moreover, a significant proportion of imports from the People's Republic of China entered the European Community, during the investigation period, with a declared purity of less than 99,95 % magnesium content. It should also be noted that oxidation can continue after release for free circulation when the product is still in the warehouse,

— Hydro Magnesium indicated in a letter that 'Surface oxidation is present in all magnesium regardless of by whom or where it is produced'. However, it should be noted that the Chinese product is particularly prone to surface oxidation because of the exposure to humidity and dampness during the long sea voyage and the low level of technology used when producing the Chinese product.

(14) The balance of evidence suggested that Chinese magnesium is more subject to oxidisation and that, as a result, buyers expect Chinese magnesium to be sold at a discount.

(15) It was decided that the level of such an adjustment should be set at 6,25 %. This level was considered to be a reasonable estimation of the purchasers' perception of the price discount associated with the quality difference between the two products.

(b) *Other adjustments*

(16) In the absence of further comments concerning the comparison of the export price with the normal value, the conclusion set out in recital 23 of the Provisional Regulation is hereby confirmed.

4. **Dumping margin**

(a) *Individual treatment*

(17) The Chinese cooperating exporters argued that their dumping margins would be increased due to the use of the non-cooperating exporters' data in the calculation of a single dumping margin and requested to be treated differently from the non-cooperating exporters.

As a general rule a single countrywide dumping margin is calculated for non-market economy countries unless individual treatment is exceptionally granted to some exporters which is not the case in this investigation.

Furthermore, all cooperating exporters are traders, but not producers, and it is the Community's policy not to specify individual duty rates for traders as they can easily change their source of supply.

(b) *Dumping margin*

(18) A comparison of the weighted average normal value, as revised for quality differences, with the weighted average export price as previously established revealed the existence of dumping. The revised single weighted average dumping margin for all Chinese exporters expressed as a percentage of the cif export price free-at-Community-frontier amounted to 31,7 %.

E. INJURY AND CAUSATION

(19) The cooperating exporters criticised the Commission's approach of examining the development of injury factors using 1995 as the main base year by arguing that this distorted the injury assessment because there were industry-wide increases in sales volume and prices in 1995

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due to favourable market conditions. However, as explained in the Provisional Regulation (recital 27), 1993 and 1994 data were also used for reasons of completeness and in the interest of a fair assessment of injury. In any event, conclusions on the assessment of injury would not have been different had 1993 been taken as the base year. Therefore the approach adopted at the provisional stage is confirmed.

1. **Price and volume of the dumped imports**

(20) A comparison of sales prices of the Community producer with those of the Chinese exporters on the Community market for the investigation period showed a weighted average price undercutting margin, expressed as a percentage of the Community industry sales price, of 36,8 %. This comparison was made at the same level of trade. Since the Chinese exporters sold to traders who in turn resold to end-users whereas the Community producer sold directly to end-users, the Community industry's sales prices were adjusted downwards deducting transport and certain sales expenses resulting in a price comparable to the import prices at cif level.

Following the imposition of a provisional anti-dumping duty, the undercutting margin has been adjusted to allow for the difference in physical characteristics between the product concerned originating in the People's Republic of China and the product concerned produced by the Community industry. The amount of the adjustment was determined in the same way as the corresponding adjustment used when comparing the export price with the normal value as explained in recital 15.

2. **Causation of injury**

(21) The exporters argued that the injury suffered by the Community industry (namely loss of sales volume and market share and a reduction in sales prices) was due to costs associated with PEM's privatisation and a restructuring initiative which would have affected it during the period for the assessment of injury. This argument cannot be accepted since the investigation demonstrated that the Community industry was not the only seller on the EU market who suffered losses of market share and reductions in sales volume and prices during the injury assessment period.

Moreover, all abovementioned costs were excluded from the total cost of production and had no effect on the calculation of the injury margin as described in more detail in recital 27 below.

(22) Therefore, it is confirmed that the dumped imports from the People's Republic of China have, when taken in isolation, caused material injury to the Community industry. The pricing behaviour of Chinese exporters on the Community market (coupled with steeply increasing volumes) is in sharp contrast to that of the other market participants and points to the conclusion that dumped imports from the People's Republic of China have caused injury to a degree which can be classified as material.

F. COMMUNITY INTEREST

1. **The Community industry**

(23) The findings of the Provisional Regulation (recital 50) are confirmed.

2. **Traders/importers**

(24) The findings of the Provisional Regulation (recital 51) are confirmed.

3. **Interest of the users**

(25) Since the publication of the Provisional Regulation, verification visits have been carried out to the two companies involved in the processing of magnesium ingots into granules, powders and alloys, i.e. Pometon SpA (Italy) and Magnesium Elektron, a division of British Aluminium Ltd (UK).

As a result, the findings of the Provisional Regulation (recitals 52 to 54) are confirmed.

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4. **Conclusion on Community interest**

(26) In view of the existence of a wide range of different sources of magnesium, it is expected that competition will remain intense on the Community market.

At the same time, any price increase resulting from anti-dumping measures has the potential to increase the costs of the downstream industry while in the event of the sole Community producer ceasing to produce magnesium there would be less competition on the Community market.

In these circumstances, the investigation has suggested that the downstream industries' future would neither be jeopardised nor disproportionately affected as a consequence of the measures taken.

This is particularly true for the two sectors of the industry representing the majority of consumption of the product concerned, i.e. the manufacturer of aluminium and magnesium grinders, where only marginal cost increases can be anticipated.

Therefore, it is considered that the benefits from removing the injury being suffered by the Community producer outweigh the potential negative effects to the users of the product concerned in the event of the imposition of measures and it is concluded that there is no reason to consider that taking measures would be against the overall interest of the Community.

G. **DUTY**

1. **Injury elimination level**

(27) In order to prevent further injury being caused by the dumped imports, anti-dumping measures in the form of definitive duties should be adopted.

For the purpose of determining the level of these duties, the Commission took account of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

As the injury consists principally of price depression and suppression resulting in a loss of profitability as well as a decrease in market share, the removal of such injury requires that the industry should be able to increase prices to a non-injurious level. To achieve this, the prices of imports of the product concerned originating in the People's Republic of China should be increased accordingly.

The representative production costs of the Community industry were therefore used, together with a profit margin of 5 %, this being considered necessary to ensure the viability of the industry.

The resulting non-injurious price based on these production costs and the profit margin was compared with the prices of the dumped imports used to establish undercutting as mentioned in recital 20 above.

The differences between these prices (on a weighted average basis and expressed as a percentage at cif level) result in an underselling margin of 41,0 %. This margin is above the dumping margin established.

Pursuant to Article 9(4) of the Basic Regulation, the definitive duty should therefore be set at the level of the dumping margin established at 31,7 %.

2. **Form and level of duty**

(28) In order to be consistent with the measures adopted in the previous proceeding concerning the same product and given the material injury suffered by the Community industry and the nature of the product, a variable duty is considered the most appropriate in this case. In these circumstances, it is proposed that a variable duty should be adopted based on a minimum price of ECU 2 622 per tonne on a cif Community border level for imports of unwrought unalloyed magnesium originating in the People's Republic of China.

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This form of the duty would only apply, however, where the cif Community frontier price is established on the basis of an invoice issued by an exporter located in the People's Republic of China to a party unrelated to it.

In all other cases an *ad valorem* duty of 31,7 % would be applied.

H. COLLECTION OF THE PROVISIONAL DUTY

(29) Given the magnitude of the injury suffered, the amounts secured by way of provisional anti-dumping duty under the Provisional Regulation should be definitively collected to the extent of the amount of the definitive duties imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of unwrought unalloyed magnesium falling within CN codes 8104 11 00 and ex 8104 19 00 (TARIC code 8104 19 00*20) originating in the People's Republic of China.

For the purpose of this Regulation, unwrought unalloyed magnesium shall comprise:

— unwrought magnesium unintentionally containing small amounts of other elements as impurities, and

— unwrought magnesium, containing intentionally added elements such as aluminium and zinc, which does not correspond to one of the alloys described in the Annex to this Regulation (TARIC additional code: 8592).

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

(a) the difference between the minimum import price of EUR 2 622 per tonne and the cif Community frontier price in all cases where the latter is:

— less than the minimum import price (TARIC additional code A 156), and

— established on the basis of an invoice issued by an exporter located in the People's Republic of China to a party unrelated to it.

No duty shall be collected where the cif Community frontier price per tonne is equal to or higher than the minimum import price;

(b) equal to an *ad valorem* duty of 63,4 % in all other cases not falling under subparagraph (a) (TARIC additional code 8900).

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3. The provisions in force concerning customs duties shall apply.

4. In instances where the customs value is reduced pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ([1]), the minimum import price, referred to in paragraph 2(a) above, will also be reduced, on a pro rata basis, so that the duty payable will be the amount by which the reduced minimum price exceeds the reduced customs value.

Article 2

The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EC) No 1002/98 shall be definitively collected at the level of the duties definitively imposed on imports of unwrought pure magnesium, as defined in the Provisional Regulation, originating in the People's Republic of China.

The amounts secured in excess of the definitive anti-dumping levels shall be released.

([1]) OJ L 253, 11. 10. 1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 1677/98 (OJ L 212, 30. 7. 1998, p. 18).

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Article 3

This Regulation shall enter into force on the day following that of 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.

ANNEX

Unwrought magnesium:

— Material designation in accordance with CEN standard EN 1753:1997:

Alloy group	Material designation		Composition % (mass fraction)															
	Symbol	Number	Element	Mg	Al	Zn	Mn	RE [1]	Zr	Ag	Y	Li	Si	Fe	Cu	Ni	Others
MgAlZn	EN-MBMgAl8Zn1	EN-MB21110	min.	Remainder	7,2	0,45	0,17	—	—	—	—	—	—	—	—	—	—
			max.	—	8,5	0,9	—	—	—	—	—	—	0,05	0,004	0,025	0,001	0,01
	EN-MBMgAl9Zn1(A)	EN-MB21120	min.	Remainder	8,5	0,45	0,17	—	—	—	—	—	—	—	—	—	—
			max.	—	9,5	0,9	—	—	—	—	—	—	0,05	0,004	0,025	0,001	0,01
	EN-MBMgAl9Zn1(B)	EN-MB21121	min.	Remainder	8,0	0,3	—	—	—	—	—	—	—	—	—	—	—
			max.	—	10,0	1,0	—	—	—	—	—	—	0,3	0,03	0,20	0,01	0,05
MgAlMn	EN-MBMgAl2Mn	EN-MB21210	min.	Remainder	1,7	—	0,35	—	—	—	—	—	—	—	—	—	—
			max.	—	2,5	0,20	—	—	—	—	—	—	0,05	0,004	0,008	0,001	0,01
	EN-MBMgAl5Mn	EN-MB21220	min.	Remainder	4,5	—	0,27	—	—	—	—	—	—	—	—	—	—
			max.	—	5,3	0,20	—	—	—	—	—	—	0,05	0,004	0,008	0,001	0,01
	EN-MBMgAl6Mn	EN-MB21230	min.	Remainder	5,6	—	0,23	—	—	—	—	—	—	—	—	—	—
			max.	—	6,4	0,20	—	—	—	—	—	—	0,05	0,004	0,008	0,001	0,01
MgAlSi	EN-MBMgAl2Si	EN-MB21310	min.	Remainder	1,9	—	0,20	—	—	—	—	—	0,7	—	—	—	—
			max.	—	2,5	0,20	—	—	—	—	—	—	1,2	0,004	0,008	0,001	0,01
	EN-MBMgAl4Si	EN-MB21320	min.	Remainder	3,7	—	0,20	—	—	—	—	—	0,7	—	—	—	—
			max.	—	4,8	0,20	—	—	—	—	—	—	1,2	0,004	0,008	0,001	0,01
MgZnCu	EN-MBMgZn6Cu3Mn	EN-MB32110	min.	Remainder	—	5,5	0,25	—	—	—	—	—	—	—	2,4	—	—
			max.	—	—	6,5	0,75	—	—	—	—	—	0,20	0,05	3,0	0,01	0,01

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Symbol	Alloy group	Material designation		Composition % (mass fraction)														
		Number	Element	Mg	Al	Zn	Mn	RE (1)	Zr	Ag	Y	Li	Si	Fe	Cu	Ni	Others
MgZnREZr (2)	EN-MBMgZn4RE1Zr	EN-MB35110	min.	Remainder	—	3,5	—	1,0	0,1	—	—	—	—	—	—	—	—
			max.	—	—	5,0	0,15	1,75	1,0	—	—	—	0,01	0,01	0,03	0,005	0,01
	EN-MBMgRE3Zn2Zr	EN-MB65120	min.	Remainder	—	2,0	—	2,4	0,1	—	—	—	—	—	—	—	—
			max.	—	—	3,0	0,15	4,0	1,0	—	—	—	0,01	0,01	0,03	0,005	0,01
MgREAgZr (3)	EN-MBMgRE2Ag2Zr	EN-MB65210	min.	Remainder	—	—	—	2,0	0,1	2,0	—	—	—	—	—	—	—
			max.	—	—	0,2	0,15	3,0	1,0	3,0	—	—	0,01	0,01	0,03	0,005	0,01
	EN-MBMgRE2Ag1Zr	EN-MB65220	min.	Remainder	—	—	—	1,5	0,1	1,3	—	—	—	—	0,05	—	—
			max.	—	—	0,2	0,15	3,0	1,0	1,7	—	—	0,01	0,01	0,1	0,005	0,01
MgYREZr (4)	EN-MBMgY5RE4Zr	EN-MB95310	min.	Remainder	—	—	—	1,5	0,1	—	4,75	—	—	—	—	—	—
			max.	—	—	0,20	0,15	4,0	1,0	—	5,5	0,20	0,01	0,01	0,03	0,005	0,01
	EN-MBMgY4RE3Zr	EN-MB95320	min.	Remainder	—	—	—	2,4	0,1	—	3,7	—	—	—	—	—	—
			max.	—	—	0,20	0,15	4,4	1,0	—	4,3	0,20	0,01	0,01	0,03	0,005	0,01

(1) RE = Rare earth metals

(2) Cerium rich

(3) Neodymium rich

(4) Neodymium and heavy RE rich

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— Material designation in accordance with CEN standard EN 12438:1998:

Alloy group	Material designation		Composition % (mass fraction)									
	Symbol	Number	Element	Mg	Al	Zn	Mn	Si	Fe	Cu	Ni	Others
MgAlZn	EN-MBMgAl3Zn1	EN-MB21130	min.	Remainder	2,6	0,7	0,20	—	—	—	—	—
			max.	—	3,5	1,4	1,0	0,30	0,01	0,05	0,001	0,05
	EN-MBMgAl6Zn1	EN-MB21140	min.	Remainder	5,6	0,7	0,20	—	—	—	—	—
			max.	—	6,5	1,4	1,0	0,30	0,01	0,05	0,001	0,05
	EN-MBMgAl6Zn3	EN-MB21150	min.	Remainder	5,1	2,1	0,20	—	—	—	—	—
			max.	—	7,0	4,0	1,0	0,30	0,01	0,05	0,001	0,05
MgMn	EN-MBMgMn1	EN-MB40010	min.	Remainder	—	—	0,50	—	—	—	—	—
			max.	—	0,01	0,05	1,3	0,05	0,02	0,02	0,001	0,05
	EN-MBMgMn2	EN-MB40020	min.	Remainder	—	—	1,20	—	—	—	—	—
			max.	—	0,01	0,05	2,5	0,05	0,02	0,02	0,001	0,05

Note: The material designation is in accordance with EN 1754.