This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

►**B**

COUNCIL REGULATION (EC) No 1334/1999

of 21 June 1999

imposing a definitive anti-dumping duty on imports of magnesium oxide originating in the People's Republic of China

(OJ L 159, 25.6.1999, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 985/2003 of 5 June 2003	L 143	1	11.6.2003

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).

▼B

COUNCIL REGULATION (EC) No 1334/1999

of 21 June 1999

imposing a definitive anti-dumping duty on imports of magnesium oxide originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to 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 11(2) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) In June 1993, definitive anti-dumping measures were imposed by Council Regulation (EEC) No 1473/93 ([2]) on imports of caustic calcined magnesium oxide (hereinafter referred to as 'CCM') originating in the People's Republic of China. These measures took the form of a variable duty, i.e. the duty was imposed on those imports which were below the minimum import price specified in the Regulation subject to review. The minimum import price was based on the normal value calculated.

2. **Request for a review**

(2) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of CCM originating in the People's Republic of China ([3]), the Commission received a request in March 1998 to review these measures pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation').

(3) The request was lodged by Eurometaux acting on behalf of Community producers whose collective output of the product concerned constitutes 100 % of the Community production of this product.

(4) The request was based on the grounds that the expiry of the measures would be likely to result in the recurrence of dumping and injury to the Community industry. Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation, of a review, the Commission initiated an investigation through the publication of a notice of initiation ([4]) pursuant to Article 11(2) of the Basic Regulation.

3. **Investigation**

(5) The Commission officially advised the complaining Community producers, the exporters and producers in the exporting country and the importers as well as their representative associations known to be concerned, and the representatives of the exporting country of the initiation of the review. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notice of initiation. In addition, the producers in India, which was chosen as an

([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 145, 17.6.1993, p. 1.
([3]) OJ C 383, 17.12.1997, p. 9.
([4]) OJ C 190, 18.6.1998, p. 4.

▼B

analogue country, were advised and sent questionnaires. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) All Community producers replied to the questionnaire. Replies were also received from three Chinese exporters, Liaoning Metals & Minerals Import & Export Corp., Citic Trading Co. Ltd and Liaoning Foreign Trade Corp. (hereinafter referred to as the 'Chinese exporters'), one related importer and one related trader replied to the questionnaires. The level of cooperation amounted, according to Eurostat data, to more than 87 % of the overall imports from the People's Republic of China. Three unrelated importers, Frank & Schulte Benelux from the Netherlands, Timab Industries SA from France and GBC Ltd from the United Kingdom, also replied to the questionnaire and made their views known in writing. No reply was obtained from the users of the product with the exception of Timab Industries, which itself imported the product in question.

(7) The Commission services sought and verified all information they deemed necessary for the purpose of determining the continuation or recurrence of dumping and injury and of the Community interest. Investigations were carried out at the premises of the following companies:

(a) *Community producers:*

— Grecian Magnesite SA, Athens, Greece

— Magnesitas Navarras, Pamplona, Spain

— Magnesitas de Rubian, Sarria (Lugo), Spain

— Styromag GmbH, St Katharein an der Laming, Austria

(b) *Producers in the analogue country:*

— Tamil Nadu Magnesite Ltd, Salem, India

(c) *Unrelated importers into the Community:*

— Frank & Schulte Benelux, Capelle a/d Ijssel, Netherlands

— Timab Industries SA, St Malo, France (also a user of the product concerned)

— GBC Ltd., Ewell (Surrey), United Kingdom

(d) *Related importers and traders:*

— Citic Germany GmbH, Bad Homburg, Germany

— Lutz Mineralien GmbH, Schifferstadt, Germany

(8) The investigation of dumping covered the period from 1 July 1997 to 30 June 1998 (hereinafter referred to as 'the IP'). The examination of the situation of the Community industry covered the period from 1 January 1994 up to the end of the IP (hereinafter referred to as 'the IIP').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product concerned by this proceeding is a form of magnesium oxide, namely natural caustic calcined magnesite (CCM), which is processed from naturally occurring magnesium carbonate or magnesite. In order to produce CCM, magnesite has to be mined, crushed, sorted and then burned in a kiln at temperatures of 700 to 1 000 ºC. The result is CCM with various magnesium oxide ('MgO') contents or grades. The main impurities in CCM 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 respectively). CCM is mainly used in agriculture for animal feeding or as a fertiliser and for industrial applications in the construction industry for flooring and insulating boards as well as in the pulp, paper and abrasives producing industries.

▼B

(10) Furthermore, CCM is not chemically uniform. However, no clear dividing lines were found enabling the classification of CCM into different products. The boundary between the grades is blurred by overlapping usage since users do use, for identical purposes, magnesite of different grades and from different sources of supply.

(11) Although CCM originating in the People's Republic of China which was sold in the Community market differed in terms of MgO content, overall this did not entail any significant differences in the basic physical characteristics, the interchangeability, the perception or the marketing of the product concerned. As in the previous investigation, all grades and types of CCM should therefore be considered as one single product for the purpose of this investigation.

2. **Like product**

(12) It was found that there were no basic differences in the physical and chemical characteristics and the uses of CCM exported to the Community and the product produced and sold in the domestic market of the analogue country. Furthermore, there were no differences between the product concerned and the product produced and sold by the complaining Community industry in the Community market. In this respect, the investigation has confirmed the conclusion of the previous investigation that users could process both the imported product and the Community-produced product without any alterations in their production process.

(13) Some unrelated importers stated that CCM from the People's Republic of China was not like CCM produced and sold by the Community industry. They claimed that these could not be considered as similar, since the raw material ($MgCO_3$) in the People's Republic of China was readily accessible in massive deposits, while the Community raw material had to be extracted from narrow veins. Furthermore, the MgO content of Chinese magnesite was naturally higher.

(14) Though the methods of extraction, the magnesite content of the deposit and the production process may vary from producer to producer, and this is so worldwide, these differences do not have a significant bearing on the end product and are not such as to justify the claim of some unrelated importers that the production of CCM in the People's Republic of China is unique in terms of the methods and processes used and the chemical and physical characteristics of the magnesite. This is confirmed by the fact that both the Community producers and the Chinese exporters have a number of common customers.

(15) Therefore, CCM exported to the Community on the one hand and the product produced and sold by the Community industry in the Community market and the product produced and sold in the domestic market of the analogue country, on the other hand, are interchangeable and have to be considered a single like product within the meaning of Article 1(4) of the Basic Regulation.

C. **DUMPING**

1. **Preliminary remarks**

(16) In accordance with Article 11(2) of the Basic Regulation, the investigation examined whether there were grounds for concluding that, in the absence of measures, there was a likelihood of a continuation or recurrence of dumping.

2. **Analogue country**

(17) In order to establish the normal value, account was taken of the fact that for this investigation the normal value for imports from the People's Republic of China had to be based on data from a

▼B

market economy third country. In this respect, Turkey was envisaged in the notice of initiation of this review as an appropriate market economy third country for the determination of normal value. However, a number of importers submitted that Turkey was inappropriate on the ground that the access to raw materials in Turkey is more difficult than in the People's Republic of China. Consequently, as the mines in Turkey do not enjoy the same natural advantages as in the People's Republic of China, the extraction and processing costs in Turkey are higher than in Chinese mines. As an alternative, one importer suggested Slovakia, where the natural conditions were alleged to be comparable to the People's Republic of China. Others suggested that the normal value should be based on domestic sale prices of limestone or dolomite in Germany, which is mined and processed like the CCM in the People's Republic of China and has a similar use.

(18) In view of the comments of the importers on the choice of Turkey as an analogue country, cooperation was not only sought in Turkey, but also in other countries where CCM was known to be produced in sufficient quantities. In particular, a request for cooperation was addressed to three known producers in Turkey, two in Brazil, one in Slovakia and two in India. No reply was obtained from Brazil, while the Slovakian producer declared itself not to be in the position to provide the requested information with respect to the IP. The sole Turkish producer of CCM willing to cooperate indicated a domestic sales volume which could not be considered as representative in relation to Chinese exports to the Community, while another Turkish producer only produced a different form of MgO, namely deadburned magnesite. Finally, one Indian producer agreed to provide the information requested in the questionnaire.

(19) As far as the proposal to use the domestic sales prices of the limestone or dolomite in Germany is concerned, it should be pointed out that limestone and dolomite cannot be considered as being like CCM as their chemical characteristics are different.

(20) The domestic sales of the Indian cooperating producer have been found to represent significantly more than 5 % of the total Community imports from the People's Republic of China during the IP. The Indian market of CCM appeared to be a competitive market where at least five domestic producers of CCM compete against each other. The magnesite, the raw material for the production of CCM, is easily available in large quantities in open cast mines close to the plants. The extraction and production process of the Indian producer is very similar to that of the Chinese producers.

(21) The Chinese exporters submitted that Turkey, though not entirely suitable, should have been maintained as an analogue country on the grounds that the normal value established in India would not have any link with the one found in Turkey in the previous investigation. However, as previously stated, sales in Turkey were too low to be representative and therefore there was no alternative to the selection of another analogue country.

(22) The Chinese exporters raised the argument that the cooperating Indian producer is entirely State-owned and hence the prices of CCM in India are controlled by the government. It is indeed true that the company in question is State-owned. However, it operates in a market economy context and its domestic sales are made in competition with a number of companies, which do not belong to the Indian Government. It was not found that the State ownership resulted in any distortion of costs or prices charged.

(23) In the light of the above, the Commission considers that India is an appropriate analogue country for the purpose of establishing normal value.

▼B

3. **Normal value**

(24) For the sole grade of CCM which is produced and sold in India, normal value has been determined on the basis of the prices paid or payable by independent customers in the domestic market for the sales of the like product which have been found to be made in sufficient quantities and in the ordinary course of trade. For the other grades, which are not produced by the cooperating company, normal value has been determined by applying an adjustment factor to the normal value determined on the basis of the grade produced by the cooperating company. Since a higher MgO content corresponds to a higher quality and therefore a more valuable product, it has been found reasonable to establish the amount of the adjustment as a direct proportion of the MgO content for the various grades exported from the People's Republic of China.

4. **Export price**

(25) Exports of CCM to the Community by the cooperating Chinese exporters represented around 87 % of the total imports of the product in question from the People's Republic of China, as estimated by the questionnaire responses and Eurostat data concerning CN code 2519 90 90 TARIC heading 10/80 under which the imports of the product under investigation are recorded.

(26) For the two cooperating exporters whose sales in the Community were all made to unrelated importers, the export price was established on the basis of the price actually paid or payable for the product sold for export to the unrelated importers.

(27) With regard to the exporter whose sales to the Community were all made to its related importer in the Community who in turn sold to a related trader, the export price has been constructed by deducting from the resale price to the first independent buyer all costs between importation and resale incurred by both the related importer and the related trader as well as a reasonable amount for profit so as to establish a reliable export price in accordance with Article 2(9) of the Basic Regulation. The amount for profit has been calculated by reference to that realised by the cooperating independent importers on average, i.e. 9 % on the sales turnover of the related trader.

5. **Comparison**

(28) The weighted average normal value per grade was compared to the weighted average export price of the corresponding grade of CCM at a fob port producing country level, in accordance with Article 2(11) of the Basic Regulation.

(29) For the purpose of ensuring a fair comparison between normal value and export price, account was taken of differences in factors, which were claimed and demonstrated to affect comparability in accordance with Article 2(10) of the Basic Regulation. In this respect, adjustments were made for inland and ocean freight, insurance, handling, loading and ancillary costs and credit costs. Furthermore, since the producers in the People's Republic of China have easier access to raw material, the Commission considered that an additional allowance should be made in order to take into account the lower costs of extraction of the magnesite ore resulting from a more favourable ore recovery ratio in the People's Republic of China as compared to India. Consequently, having found that the ore recovery ratio in India is similar to that found in Turkey, which was used as a reference country in the previous investigation and in the absence of any other new facts provided by the interested parties, it has been decided to apply the same adjustment to the normal value as requested by Chinese parties in the previous investigation, i.e. a reduction of 20 % of the extraction cost as found in India.

▼B

(30) Finally, a request of the Chinese exporters for an adjustment for difference in the level of trade was found justified, but a precise calculation was not considered necessary, given that this is an expiry review and considering that there was still a significant dumping margin if such adjustment had been made.

6. **Dumping margin**

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

D. LIKELIHOOD OF RECURRENCE OR CONTINUATION OF DUMPING

(32) Further to the analysis of the existence of dumping during the IP, the likelihood of continuation of dumping, should the measures in question be removed, was examined. On the basis of the information supplied by the exporters, it is considered likely that the Chinese exports of CCM will continue to be made either at the same or even at lower prices than during the IP. This is supported by the fact that US official statistics showed that the fob Chinese export prices to this country, which is one of the main destinations of CCM from the People's Republic of China, were on average considerably lower than the corresponding prices of Chinese exports to the Community during the IP.

(33) On the basis of the fact that the exports of CCM originating in China have been found to be made at dumped prices during the IP and that, according to the information provided by the exporters, a slight decline of the Chinese export prices to the Community is forecast and considering the Chinese pricing policy applied for third countries where no anti-dumping measures are in force, it is concluded that dumping is likely to continue, should the measures in force be removed.

(34) In addition, the abolition of the export licence system mentioned below would probably lead to a drop of Chinese export prices to around EUR 75, which would be tantamount to a further increase of dumping.

E. DEFINITION OF THE COMMUNITY INDUSTRY

(35) According to Article 4(1) of the Basic Regulation, the term 'Community industry' shall be interpreted as referring to the Community producers as a whole of the like product or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 5(4) of the Basic Regulation, of the total Community production of those products. The investigation confirmed that the applicant Community producers represented 100 % of the Community production of CCM. Therefore, they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the Basic Regulation.

F. ANALYSIS OF THE SITUATION IN THE COMMUNITY CCM MARKET

(36) Firstly, it should be noted that most of the specific data relating to the Community industry for the IIP have been calculated on the basis of the data of three Community producers Grecian Magnesite, Magnesitas Navarras and Magnesitas de Rubián. The fourth Community producer, Styromag, was only established as an independent company in 1996 as a result of the bankruptcy of the company Magindag in 1994, which was also a producer of CCM. Since information was only available for Styromag as from 1996 onwards and in order to present a coherent picture of the economic situation of the Community industry, the

▼B

Commission considered it inappropriate to take Styromag's information into account for the purpose of the analysis of the situation of the Community industry. Data from Styromag have been included in the determination of total Community consumption and have been reflected in the analysis of price undercutting, which covers the IP. It can also be stated that the analysis of the situation of the Community industry set out below would not have differed, if extrapolated data for Styromag for the years 1994 and 1995 had been included in the analysis.

1. **Consumption in the Community market**

(37) The total consumption of CCM in the IP was calculated on the basis of:

— the sales volume of the Community industry in the Community market,

— the imports into the Community of CCM from the People's Republic of China, and

— the imports into the Community of CCM from all other third countries.

(38) On this basis, consumption rose from 328 000 t in 1994 to 356 000 t in the IP, a level close to that established for the previous investigation period (368 000 t). The period 1994 to 1996 was characterised by a continuous growth of consumption up to 422 000 t in 1996. Consumption in the Community was pushed up by the influence of weather conditions on the demand for low grades of CCM which are mainly used in agriculture and by the potential development of a number of new industrial markets found. After the peak, demand decreased by 18 % in 1997, but partially recovered in the IP.

(39) Finally, it can be stated that Community consumption of CCM used for the two applications was relatively evenly split, i.e. about 50 % of the consumption was used for agricultural purposes, while the other half was destined for industrial uses.

2. **Imports from the country concerned**

(a) *Import volume, import share and market share of the imports concerned in the IIP*

(40) The volume of imports of CCM originating in the People's Republic of China increased from 86 089 t in 1994 to 110 592 t in the IP, equivalent to an increase of about 28 % during the IIP. The volume imported during the IP is near the level of the previous investigation period in the original investigation (120 000 t).

(41) The share of CCM imported from the People's Republic of China in terms of volume among all imports into the Community was between 77 % and 82 % during the IIP. The highest import share was reached in the peak demand year of 1996. However, it should be noted that at the time of the previous investigation period, the import share of the People's Republic of China accounted only for around 54 %.

(42) The market share of the imports from the People's Republic of China in the Community market rose from 1994 to the IP from 26,3 % to 31 %. This is equivalent to an overall increase of 4,7 points during the IIP. In 1996, in the year with the exceptionally high demand, the Chinese market share reached 36,4 %. In the previous investigation, imports from the People's Republic of China held a market share of 32 % in the IP.

▼B

(b) *Price evolution and price behaviour of the imports of the product concerned*

(i) *Price evolution of the imports concerned*

(43) According to Eurostat information, the Chinese average cif sales prices into the Community significantly increased between 1994 and 1995 and decreased continuously thereafter. The average sales prices of the imports concerned increased thus during the IIP by about 14 %.

(44) It was argued that the Chinese export licence system which was allegedly introduced after the anti-dumping duties had been imposed would have progressively limited the supply of Chinese CCM into the Community thereby pushing up the Chinese sales prices to the Community. However, as mentioned above, the Chinese import volume increased by 28 % during the IIP and, although Chinese import prices into the Community increased after the imposition of the measures in 1993 until 1995, they decreased continuously since.

(ii) *Price behaviour of the exporters*

(45) In order to determine the price behaviour of the exporters in relation with the Community producers' price behaviour, both the exporters' prices and the Community industry's prices were analysed for the IP. In this analysis, sales of the Community industry and sales of the Chinese cooperating exporters to unrelated importers in the Community, as well as the resales by related importers to unrelated customers, considered to be at the same level of trade, were used. For this analysis, the product was grouped into two categories according to its use for agricultural and industrial applications. On this basis, the sales prices for CCM produced and sold by the Community industry were compared to the sales prices of Chinese CCM used for the same purpose.

(46) It should be noted that the cooperating Chinese exporters sold a significant share of their export volume to the Community via customers located outside the Community at a fob-Chinese border level. Hence, adjustments had to be made in order to come to a cif Community frontier level on the basis of the information of the cooperating importers and exporters.

(47) The weighted average cif prices of the imports concerned were compared to the prices of the Community producers, adjusted for differences in delivery terms, for those markets where both parties realised sales, since only in such markets could a meaningful comparison be carned out. The investigation established that the overall average sales prices of the Chinese exporters for both uses were lower than those of the Community industry. In particular, it was established that, in relative terms, the average difference between the prices of Chinese exports and the Community industry's prices was bigger for CCM used in the industrial sector than for CCM used in the agricultural sector.

(48) Finally, the analysis of the cooperating importers' questionnaire responses revealed that, for significant sales of CCM used for agricultural purposes, the exporters' cif sales price was just at the minimum price level of ECU 112 t, suggesting that these prices were limited by the anti-dumping measures presently applicable.

(49) Despite the fact that the exporters' prices were not reflecting that Chinese CCM was of a higher purity than the CCM produced by the Community industry, the Commission did not deem it to be necessary to apply an adjustment factor. Such an adjustment had been claimed by the Community industry.

▼B

3. **Economic situation of the Community industry**

(a) *Production*

(50) Comparing the situation at the beginning and at the end of the IIP, the total production of CCM has been relatively stable from 1994 to the IP. The production rose by 6 % from around 207 000 t to around 219 000 t in the period mentioned above.

(b) *Production capacity*

(51) The production capacity of the Community industry rose from 265 000 t in 1994 to 280 000 t in the IP. This is equivalent to an increase of around 6 % during the IIP.

(c) *Capacity utilisation*

(52) At 78 %, capacity utilisation of the Community industry amounted to about the same level in 1994 and in the IP. However, capacity utilisation rose to 89 % and 88 % respectively in 1995 and 1996. This was the result of an expectation of strong sales in this period, which in particular in 1996, did not materialise. Since then, the capacity utilisation of the Community industry decreased continuously.

(d) *Sales by volume*

(53) The total sales volume of the Community producers went up from around 209 000 t in 1994 to almost 211 000 t in the IP. The sales volume considerably increased between 1994 and 1995, but it has decreased continuously since.

(e) *Market share*

(54) The Community industry's market share in the Community market decreased from 63 % in 1994 to 58 % in the IP. This is equivalent to a decrease of five percentage points during the IIP. In 1996, the year with the especially high demand, the Community industry's market share dropped down to 50 %. Although in the following year the Community industry regained the lost percentage points, the share of the Community industry has again shown a downward trend since 1997.

(f) *Price development*

(55) The investigation showed that the Community producers' average selling price of CCM rose by 7 % from 1994 to the IP. The Community industry's sales prices reached a peak in 1996 due to the high demand of the market in that year. While the prices for agricultural CCM increased during the IIP by 13 %, the sales prices for CCM used for industrial purposes rose by 6 %. However, whereas the prices for agricultural CCM showed a relatively stable development after the peak in 1996, prices for CCM used for industrial purposes dropped by 5 %.

(g) *Profitability*

(56) For the purpose of the profitability analysis, sales of certain by-products of the CCM production of the Community industry were taken into account with the result of decreasing CCM specific costs and increasing CCM related profits. However, the Community industry claimed that these sales were only of a temporary character and could cease immediately. The Commission considered that, due to the considerable amount of sales of by-products, both in value and volume terms, which had been marketed over an extended period of time, they had to be reflected in the CCM profitability analysis with the result that the profitability realised on CCM sales increased.

(57) On this basis, the profitability of the Community industry, expressed as a percentage of net sales, increased during the IIP

▼B

from a weighted average loss of 4,0 % in 1994 to a profit of 5,2 % in the IP. The profit situation of the Community industry as a whole has improved by 9,2 percentage points during the IIP. However, the Community industry considers a yearly profit rate of 10 % as necessary to maintain their activities.

(h) *Employment*

(58) Employment in the Community industry declined by 6,7 % during the IIP.

(i) *Stocks*

(59) The closing stocks of the Community producers went up from 24 788 t in 1994 to 34 240 t in the IP which amounts to an increase of about 38 % in the IIP. Closing stocks increased continuously from 1994 to 1997, but dropped then in the IP.

(j) *Investments*

(60) The figure of total investments of the Community industry went up by about 23 % within the period from 1994 to the IP. The Community industry has invested strongly, particularly in the years 1995 and 1996. The investments mainly concerned the improvement and further rationalisation of the production process in order to economise costs. Part of the Community industry installed modern filters in their kilns to reduce environmental pollution.

(k) *Export activity of the Community industry*

(61) The Community industry's exports of CCM to third countries show a relatively stable development. The yearly exports during the IIP amounted to about 8 000 t to 11 000 t per year.

(l) *Conclusion*

(62) After the imposition of a variable anti-dumping duty in 1993, the situation of the Community industry has improved during the IIP. Economic factors such as production, production capacity, average sales prices per tonne, profitability and investments showed a positive development. Both production and production capacity have increased by about 6 % during the IIP, while the average sales prices rose by about 7 % in the same period. After two years of losses, the Community industry's sales have been profitable again since 1996. It is likely that this was due to the reduction of personnel and the investments made in the previous year in order to rationalise production. In the IP the Community industry's sales volume and the capacity utilisation reached the same level as in 1994. Nevertheless, the above analysis also shows that this is not the case for all indicators and that in particular from 1996 onwards a downward trend has occurred.

(63) In fact, capacity utilisation, market share, employment and closing stocks did not develop favourably. The Community industry lost about five percentage points of the Community market during this period. The Community industry employed 6,7 % less personnel in the IP as compared to 1994. The closing stocks of the Community industry continuously rose between 1994 and 1997-the overall increase in the IIP amounted to 38 %. Furthermore, capacity utilisation by the Community industry decreased constantly from 1995 onwards, i.e. even in 1996, the year of the high demand, capacity utilisation did not rise to more than 88 %.

(64) The investigation established that, although the situation of the Community industry has improved in some areas, some other economic factors did not develop so favourably. This has to be seen in conjunction with the low prices of the Chinese imports, which were made close to the minimum price and which exerted price pressure on the Community industry. This has prevented

▼B

the Community industry from fully recovering from the effects of the previous dumping practices.

(65) It was alleged that the Community industry improved its situation in the Community market despite the continued presence of imports from the country concerned. In this respect, it can be noted that, although the anti-dumping measures have contributed to the improvement of the economic situation of the Community industry, their effect has, as shown above, been diluted. This argument is supported by the fact that imports from the People's Republic of China increased by 28 % during the IIP thereby gaining 4,7 percentage points in terms of market share in the same period.

4. **Import volumes and import prices from other third countries**

(a) *Import volume*

(66) The import volume of CCM from other third countries increased in the IIP from about 25 000 t in 1994 to 26 000 t in the IP. This is equivalent to an increase of about 4 %. Due to the above-described high demand for CCM in 1996, imports from other third countries reached a peak in that year with more than 33 000 t.

(67) The market share of imports from other third countries was 8 % from 1994 to 1996 and decreased by one percentage point in 1997. The market share for these countries has thus been relatively stable during the IIP.

(b) *Sales prices for imports from third countries*

(68) According to Eurostat the average sales price for imports from third countries rose by 43 % in the IIP.

5. **Conclusion**

(69) Compared with the figures of the previous investigation, Community consumption has shown a relatively stable development. It was alleged that the demand in the Community expanded rapidly between 1995 and 1996, thereby exceeding the Community industry's capacity, which made an increase of Chinese CCM imports inevitable. It should be noted, however, that the capacity utilisation rate of the Community industry was about 89 % in 1995 and dropped continuously since. It can therefore be concluded that Community consumption did not have a major influence on the situation of the Community industry during the IIP.

(70) Moreover, it seems that it was rather the decreasing Chinese import prices from 1995 onwards that made the Chinese import volume increase. In any event, no such significant increase in demand occurred in the period up to the IP, which could explain the increase in imports and market share of Chinese CCM as established during the investigation.

(71) The Community industry undertook considerable efforts to improve its competitiveness towards the main Chinese competitors and competitors from other third countries. These efforts are particularly visible when looking at the extent of investments during the IIP. From 1994 to 1997, the Community industry invested considerable amounts in order to modernise and rationalise its production facilities. However, due to the continued dumped imports from the People's Republic of China, these efforts have not been entirely successful. The Community industry remained in a vulnerable situation.

▼B

G. LIKELIHOOD OF RECURRENCE OF INJURY

1. Analysis of the situation of the exporting country concerned

(a) *The Chinese Licence System*

(72) In April 1994, the MOFTEC (Ministry of Foreign Trade and Economic Cooperation) and the CCCMMC (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters) introduced an export licence system for all exports of certain minerals which is basically identical to an export quota system. All different sorts of magnesia, including caustic calcined magnesite, have been covered by this licence system since. In 1998, the licence fee was about ECU 37 t CCM. This implies that, if the minimum price of ECU 112 t is met, the actual sales price without licence fee would be around ECU 75 t.

(73) Furthermore, according to Eurometaux the Liaoning Province where most of the producers are situated, introduced in 1995 another local tax which in 1997 amounted to around ECU 15 t. It has been argued that this licence system is sufficient to reduce the risk of renewed injurious dumping.

(74) Eurometaux claimed that the Chinese licence system for magnesite could be abolished soon and feared that Chinese exports of magnesite would, as a consequence of the abolition, increase in volume and considerably decrease in prices, should the anti-dumping measures not be continued.

(75) The exporters argue that the licence system has brought stability and reliability in the exports of magnesite from the People's Republic of China and that there is no reason to assume that the system would be dropped soon. They further stated that the exporters would, if the anti-dumping measures did not continue and the licence system dropped, certainly not drop their prices in a stable market such as exists in the European Community and suddenly voluntarily abstain from making higher gains.

(76) In view of the above arguments and in view of the nature of the system described above which is run autonomously by the government of the exporting country, it must be stated that the existence or abolition of an export licence system cannot have any influence on the decision of the Community institutions whether or not to renew anti-dumping measures. However, the analysis of this system merely underlined the potential of the Chinese exporters to sell CCM at very low prices.

(b) *Chinese exports to third countries*

(77) The Commission has, on the basis of US trade statistics, analysed the Chinese CCM exports to the USA. These imports accounted for 67 % of the worldwide CCM imports into the USA in 1997 and to 63 % in 1998 until August.

(78) The total volume of Chinese exports to the USA rose from 72 477 t in 1994 to 89 440 t in 1997 which is equivalent to an increase of 23 %. In 1995, Chinese exports to the USA increased to an absolute maximum of more than 96 000 t a volume at about the same level as the volume of Chinese exports to the Community, while the trend was decreasing in 1996 again.

(79) Even though the Chinese CIF sales prices to the United States increased from 1994 to 1995 by 80 % starting from a very low level, they have decreased since and remained considerably below the EU minimum price of ECU 112 t imposed in 1993.

(80) A price comparison for all types of CCM shows, according to Eurostat, a Chinese average sales price in the Community market which is about one third higher than the average sales price in the US market. Therefore, there appears to be no reason to believe that, in the absence of measures, Chinese prices would not drop to levels comparable to the prices for imports into the

▼B

US, in particular as import prices into the Community have been found to be partially very close, if not equal, to the minimum price, i.e. they appear to be only at that level because of the existence of the minimum price.

(c) *Production, capacity, capacity utilisation and stocks*

(81) The Commission sent questionnaires to eight Chinese producers and trading companies, *inter alia*, in order to establish the level of production, the production capacity, the capacity utilisation and the stocks. However, the Commission could not determine the production levels of the Chinese producers nor the exact capacity, capacity utilisation and stocks, since three of the four cooperating companies are pure trading companies and only one company itself produces CCM. The other producers did not cooperate. Since this did not allow for a representative analysis of the Chinese CCM production and since no official statistics were available, the Commission had, according to Article 18 of the Basic Regulation, to use the information available.

(82) Therefore, it was decided that the information provided in the request for review reflecting industry and market research information should be used. According to these sources, production in the last few years can be estimated to be at around 600 000 t annually, of which only 200 000 t are destined for the Chinese domestic market.

(83) On the same basis, information from the request for review had to be used in determining the production capacity, capacity utilisation and stocks. According to the same source, the production capacity of the Chinese producers amounted to more than 700 000 t per year. As far as the capacity utilisation is concerned, the Chinese producers have substantial idle production capacities. Chinese stocks of CCM amounted to around 500 000 t.

2. **Conclusion on the recurrence of injurious dumping**

(84) The Chinese export prices to the other main market for CCM, the USA, for which the export licence system is also applicable, were very low between 1994 and mid 1998. Even though these prices increased from 1994 to 1997 by about 70 % starting from a very low level, they still remained considerably below the EU minimum price imposed in 1993 and the actual Chinese export prices to the Community.

(85) Furthermore, given the nature of the Chinese licence system, whose abolition would alone allow the Chinese cif sales prices to drop by about EUR 37 t, the huge raw material reserves and the large Chinese unused production capacities demonstrate that there is a significant potential that the Chinese exporters will resume injurious imports again. Therefore, it was concluded that, in the absence of the measures, there is a likelihood of a recurrence of injurious dumping and that the measures in force should, for that reason, be maintained.

H. **COMMUNITY INTEREST**

1. **Introduction**

(86) In accordance with Article 21 of the Basic Regulation, it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of Community interest was based on an appreciation of all the various interests, such as the Community industry, the importers and traders, the users of the product concerned. In order to assess the likely impact of a continuation of the measures, the Commission services requested information from all interested parties mentioned above.

▼B

(87) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, it should be noted that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place. Consequently, the timing and nature of the present investigation has allowed an assessment of any negative impact on the parties concerned by the anti-dumping measures imposed.

(88) The Commission sent questionnaires to 24 importers, of which three unrelated importers and one related importer fully cooperated. Furthermore, questionnaires were sent to two user organisations, CEFIC and Emfema. However, they did not reply to the questionnaire.

(89) On this basis, it was examined, whether, despite the findings on dumping, injury and continuation or recurrence of injurious dumping respectively, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. **Interests of the Community Industry**

(90) The results of the investigation allow for the conclusion that, without the continuation of the measures, the situation of the Community Industry will continue to be vulnerable or will even deteriorate.

(91) The Community industry has been suffering from low priced dumped imports of CCM from the People's Republic of China. The objective of the anti-dumping measures under review, that is, to reestablish fair competition in the Community market between the Community producers and their exporting counterparts in third countries, has not been fully met as has been shown above.

(92) The Community industry has been making considerable efforts to improve its productivity in recent years, in an attempt to lower its cost of production and to enhance its competitiveness in this price sensitive market. Rationalisation efforts and investments were made and the selling, general and administrative (SG & A) costs of the Community industry declined during the IIP. Furthermore, one Community producer in Greece who took part in the previous investigation went bankrupt, the parent company of the newly participating Austrian Community producer Styromag, Magindag, had gone bankrupt, too, in 1994, and Styromag had to be completely restructured. The Community industry has not been in a position to make a reasonable profit during the IIP.

(93) In view of the nature of the economic difficulties experienced by the Community industry, in particular the fact that it was prevented from recovering from the unhealthy situation caused by the dumped imports, the Commission services consider that, in the absence of intervention, further deterioration of the situation of the Community industry is quite likely, given the level of losses incurred by them over an extended period. This could entail a severe reduction in the number of employees. In the course of this investigation it has been established that the Community industry is viable, but continues to be in precarious situation, and that it is highly probable that, without the continuation of anti-dumping measures to correct the effects of dumped imports, the financial situation of the Community industry will deteriorate. Thus, the existence of the Community industry and many jobs may, ultimately, be at risk.

(94) Furthermore, the continuing restructuring efforts made by the Community industry show that it is not ready to abandon this segment of production. To maintain anti-dumping measures would therefore be in the interest of the Community industry.

▼B

3. **Interests of importers and traders**

(95) On the one hand, some importers and traders are against the prolongation of the anti-dumping measures arguing that a fixed minimum price distorts international trade and artificially increases the import price of the product concerned. They claimed that the Community industry constantly decreased its prices during the IIP, whereas the Chinese producers were not in the position to compete with the Community industry, as they were constrained by the minimum price. It should be noted, however, that the importers could not provide any evidence for this argument. On the contrary, the investigation revealed that the Community industry's sales prices have increased during the IIP by about 7 % and the Chinese market share in the Community during the IIP rose by about 5 %.

(96) On the other hand, some other importers and one importing user stated that the anti-dumping measures had created a certain price stability in the Community market for CCM. Moreover, the minimum price has enabled the Community industry to continue with its production and thereby maintained competition between Chinese and Community producers.

(97) It is therefore concluded that the cost situation of the importers of the product concerned has not been negatively influenced by the imposition of the anti-dumping measures. It is likely that a continuation of the measures will not lead to a deterioration of their cost situation in the future.

4. **Interests of users**

(98) None of the Community users answered the questionnaire sent by the Commission services during the current investigation nor provided any evidence on the incidence on their cost of production of the measures in force. Following the lack of substantiated information submitted by the users concerning the impact of the measures in force on the structure of the cost of production using CCM, a subsequent analysis was not performed. However, since the users did not respond, it can be assumed that the anti-dumping measures did not have any negative influence on their cost situations.

(99) In any case, the result of the present anti-dumping measures has not been to close the Community market to imports, but rather to level the unfair trade practices and to prevent the distorting effects of dumped imports. In this specific case, it seems that the measures did not prevent imports from the country concerned from entering the Community market. As mentioned above, imports from the People's Republic of China increased significantly, by 28 %, during the IIP.

(100) Furthermore, it was found that, in view of the fact that the Community industry has a significant market share, is viable and has invested significant amounts to improve its competitiveness, and given the presence of other suppliers located outside the Community, the risk of a general supply shortage is very low.

(101) Since the measures have been in place for a certain period and would be maintained at the same level, it can be concluded that this would not imply a deterioration, if at all, of the situation of the users.

5. **Consequences for competition in the Community market**

(102) As far as the competitive environment in the Community market is concerned, the measures proposed below are not such as to foreclose the Community market to the exporters under review, and therefore it will allow the continued presence of these exporters in the market. It should be recalled that the importers and users have always enjoyed the presence of a number of competitors in the market. The Community industry, even when

▼B

exploiting its total production capacity, could only satisfy about 80 % of the demand on the Community market. Imports from third countries will therefore always be necessary. Thus, even if the existing anti-dumping measures were continued, the exporters of the country concerned would be able to continue to export to the Community at fair prices.

6. **Conclusion on Community interest**

(103) On the basis of the information available and having analysed all the various interests involved, the Commission services state the following: On the one hand, a continuation of the anti-dumping measures is likely to result in a stable price for CCM in the Community market which, over the duration of the measures in force, appears not to have had any negative effects on the economic situation of users and importers. However, on the other hand, leaving the Community industry without adequate protection against the dumped imports, would not only further aggravate its difficulties, but could even lead to its disappearance. The price advantage for users resulting from the non-imposition of anti-dumping measures does not compensate for the benefit achieved by the removal of the trade distortion caused by the dumped imports.

I. **ANTI-DUMPING MEASURES**

(104) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the maintenance of the existing measures. They were granted a period within which to make representations subsequent to disclosures. The comments of the parties were considered and, where appropriate, the findings have been modified accordingly.

(105) It follows from the above that, as provided for by Article 11(2) of the Basic Regulation, the anti-dumping measures in the form of a variable duty associated to a minimum import price of ECU 112 t on imports of CCM originating from the People's Republic of China imposed by Regulation (EEC) No 1473/93 should be maintained, but expressed in the new the European currency EURO. The new minimum price is therefore to be EURO 112 t.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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).

▼M1

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

(a) the difference between the minimum import price of EUR 112 per tonne and the net, free-at-Community-frontier price, before duty, in all cases where the latter is:

— less than the minimum import price, and

— established on the basis of an invoice issued by an exporter located in the People's Republic of China directly to an unrelated party in the Community (TARIC additional code A420);

(b) zero, if the net, free-at-Community-frontier price, before duty, is established on the basis of an invoice issued by an exporter located in the People's Republic of China directly to an unrelated party in the Community and equal to or higher than the minimum import price of EUR 112 per tonne (TARIC additional code A420);

(c) equal to an *ad valorem* duty of 27,1 % in all other cases not falling under subparagraph (a) and (b) (TARIC additional code A999).

▼M1

In cases where the anti-dumping duty is established according to subparagraph 2(a) of Article 1 and where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93, the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Community-frontier price, before customs clearance.

▼B

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

Article 2

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

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