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COUNCIL REGULATION (EC) No 360/2000

of 14 February 2000

imposing a definitive anti-dumping duty on imports of dead-burned (sintered) magnesia originating in the People's Republic of China

(OJ L 46, 18.2.2000, p. 1)

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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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imposing a definitive anti-dumping duty on imports of dead-burned (sintered) magnesia originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]), and in particular Articles 9 and 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 December 1993, definitive anti-dumping measures were imposed by Council Regulation (EC) No 3386/93 ([2]) in the form of a variable duty associated to a minimum import price of ECU 120/tonne on imports of dead-burned (sintered) magnesia (hereinafter DBM) originating in the People's Republic of China. The underlying investigation period covered the period from 1 July 1990 to 30 June 1991.

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 DBM originating in the People's Republic of China ([3]), the Commission, in June 1998, received a request 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 (hereinafter referred to as the 'applicant producers') whose collective output of the product concerned constitutes 62 % of the Community production of DBM.

(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 consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation ([4]) pursuant to Article 11(2) of the Basic Regulation.

3. **Investigation**

(5) The Commission officially advised the applicant Community producers, the exporters and exporting producers in the People's Republic of China (hereinafter 'Chinese exporters'), the importers as well as their representative associations known to be concerned, and the representatives of the government 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, three known producers in Turkey,

([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 306, 11.12.1993, p. 16.
([3]) OJ C 177, 10.6.1998, p. 5.
([4]) OJ C 385, 11.12.1998, p. 7.

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which was chosen as an analogue country, were advised of the initiation of the review 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 the applicant Community producers replied to the questionnaire. Neither the Chinese exporters and exporting producers nor the importers replied to the questionnaire. However, one importer made its views known in writing and another provided certain information. Two users replied to the questionnaire and another one provided certain information.

(7) The Commission sought and verified all information it deemed necessary for the purpose of a determination of the likely continuation or recurrence of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) applicant Community producers:

— Grecian Magnesite SA, Athens, Greece,

— Magnesitas Navarras, Pamplona, Spain;

(b) producer in the analogue country:

— Kümas AS, Kütahya, Turkey;

(c) users in the Community:

— Sambre et Dyle, Belgium,

— Bet-Ker Oy, Finland.

(8) The investigation of continuation or recurrence of dumping covered the period from 1 January 1998 to 31 December 1998 (hereinafter referred to as 'IP'). The examination of continuation or recurrence of injury covered the period from 1 January 1994 up to the end of the IP (hereinafter referred to as 'IIP').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product under consideration is natural dead-burned magnesia (DBM) which is processed from magnesite, that is naturally occurring magnesium carbonate. In order to produce DBM, magnesium carbonate has to be mined, crushed, sorted and then burned in a kiln at temperatures of 1 500 to 2 000 ºC. The result is DBM with a MgO (magnesium oxide) content ranging from 80 to 98 %. The main impurities in DBM 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). DBM is mainly used in the refractory industry to make formed and unformed refractories. There are no significant differences in the basic chemical and physical characteristics, the interchangeability and the uses of the product under consideration. Therefore, as in the previous investigation, all grades of DBM should be considered to form one single product for the purpose of this investigation.

2. Like product

(10) It has been claimed by a user of the product under consideration that DBM from the People's Republic of China was not a like product by comparison to DBM produced and sold in the Community. This user alleged differences in certain characteristics, such as the quality. In this respect the investigation has shown that magnesite is extracted and processed into DBM in similar ways; furthermore this latter is used to make the same range of refractory products. While the methods of extraction, the MgO content of the deposit and the production process may vary, these differences do not have a significant bearing on the end product and are not such as to justify the claim that DBM originating in the People's Republic of China and the Community produced DBM are different in terms of chemical and

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physical characteristics. This is confirmed by the fact that both the Community producers and the Chinese exporters have a number of customers in common.

(11) Therefore, DBM exported to the Community from the People's Republic of China, DBM produced and sold by the complaining Community industry in the Community and the DBM produced and sold in the domestic market in Turkey are considered to be like products within the meaning of Article 1(4) of the Basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

1. Preliminary remarks

(12) In accordance with Article 11(2) of the Basic Regulation, the purpose of this type of review with regard to the dumping aspects is to determine whether or not, the expiry of measures would lead to a continuation or recurrence of dumping.

2. Analogue country

(13) In establishing 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 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. An unrelated importer submitted that Turkey was inappropriate on the ground that the access to raw materials in Turkey was more difficult than in the People's Republic of China: mines of magnesite in Turkey do not enjoy the same natural advantages as in the People's Republic of China so that under these conditions the extracting and processing costs were higher than in Chinese mines. The same importer, moreover, claimed that the Turkish domestic market was too small to be representative for the Chinese market. However, this importer did not suggest any alternative market economy third country.

(14) The Commission examined whether Turkey, which was already used as market economy third country in the previous investigation, was still a reasonable choice. In particular it was found that at least three Turkish companies produced and sold DBM in Turkey in significant quantities in competition with each other and with exporters from other countries. The question of access to raw materials being easier in the People's Republic of China than in Turkey was addressed in the original investigation and no new evidence was submitted to change the conclusion that Turkey was an appropriate market economy third country. In so far as such differences were shown to exist, these could be taken into account by making the necessary adjustments in accordance with Article 2(10) of the Basic Regulation (see recital 19). In the light of the above, a request for cooperation was addressed to the three known Turkish producers of which one accepted to cooperate.

3. Normal value

(15) In order to establish normal value it was first determined for the only cooperating Turkish producer whether the total volume of domestic sales of the product under consideration was representative in accordance with Article 2(2) of the basic Regulation, i.e. whether these sales represented more than 5 % of the sales volume of the product concerned exported by the People's Republic of China to the Community. The domestic sales in question were found to be representative.

It was then established whether sufficient domestic sales of the product under consideration had been made in the ordinary course of trade in accordance with Article 2(4) of the Basic Regulation. As the volume of profitable transactions was lower

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than 80 %, but not lower than 10 % of sales, normal value was established on the basis of the weighted average prices actually paid for the profitable sales of the product under consideration.

4. **Export price**

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

5. **Comparison**

(17) The weighted average normal value was compared to the weighted average export price of DBM, in accordance with Article 2(11) of the Basic Regulation, both at fob port producing country level.

(18) For the purpose of ensuring a fair comparison between normal value and export price, account was taken for differences in factors affecting price comparability in accordance with Article 2(10) of the Basic Regulation. In this respect, adjustments were made for inland and ocean freight, insurance, handling, loading and ancillary costs and credit costs.

(19) In the previous investigation it was accepted that access to raw materials was easier in the People's Republic of China than in Turkey. With no information submitted indicating any change in this respect an allowance has been granted in order to take into account the difference in extraction rates between the two countries. It has been decided to apply the same adjustment to the normal value as was applied In the previous investigation, i.e. a reduction of the normal value corresponding to 20 % of the extraction cost found for the cooperating Turkish producer.

(20) Furthermore, as in the previous investigations it was considered that the purity of the People's Republic of China raw material is higher than the Turkish raw material and therefore an adjustment was made to take account of such difference.

6. **Dumping margin**

(21) 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 very substantial, in the order of 50 %.

(22) On the grounds that dumping has taken place at very significant levels throughout the IP, it is considered very likely that dumping, at the very least at similar levels, will continue if the measures are removed.

D. **LIKELIHOOD OF RECURRENCE OF DUMPING**

(23) Given the existence of high import volumes with very high levels of dumping, it is not considered necessary to examine whether dumping would recur should measures be removed.

E. **DEFINITION OF THE COMMUNITY INDUSTRY**

(24) During the IP there were four producers of DBM in the Community. The investigation established that the two applicant Community producers represented 62 % of the Community production of DBM and, therefore, constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the Basic Regulation.

(25) It should be noted that two out of the four Community producers representing the Community industry in the previous investiga-

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tion ceased their activity in 1991, i.e. in the course of the previous investigation. The two producers were Magnomin SA, Thessaloniki, Greece, and Financial Mining, Industrial & Shipping Corporation (Fimisco), Athens, Greece. Fimisco was liquidated in 1992 and its assets were sold in 1996 to a refractory producer, Viomagn, Greece. Although Viomagn was not among the applicants of the present investigation, it is supporting it. As regards Magnomin, it has definitively ceased operations since its mining licence expired in 1997.

(26) As concerns the non-cooperating (but non-opposing) producer Veitsch-Radex, Austria, the investigation has shown that it is a completely downstream integrated producer, using its output of DBM exclusively for internal consumption.

F. ANALYSIS OF THE SITUATION IN THE COMMUNITY MARKET

1. Consumption in the Community market

(27) The apparent Community consumption of DBM was established on the basis of:

— the sales volumes of the Community producers in the Community,

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

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

(28) On this basis, during the IIP, consumption decreased by 2 %, from around 497 000 tonnes in 1994 to around 486 000 tonnes in the IP. In particular, after a peak in 1995 (+ 20 % as compared to 1994), demand continuously decreased reaching its lowest level in 1997. The market recovered to a considerable extent during the IP, where consumption increased by 13 % compared to 1997.

2. Imports from the country concerned

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

(29) The import volume of DBM originating in the People's Republic of China during the IIP did not follow the trend of the consumption. Between 1994 and the IP, Chinese imports increased by around 10 %, from around 238 000 tonnes to around 261 000 tonnes, while Community consumption decreased by 2 %. Moreover, between 1997 and the IP, the imports concerned increased by 30 %, whilst consumption increased only by 13 %. It is to be noted that the volume imported during the IP (260 967 tonnes) is significantly higher than the corresponding level of the imports found during the IP in the previous investigation (176 000 tonnes).

(30) The market share of imports Originating in the People's Republic of China increased from 48 % in 1994 to 54 % in the IP. It is worth noting that during the IP in the previous investigation, the Chinese market share was established at a level corresponding to index 85 as compared to a level of 100 in 1994.

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

i) Price evolution of the imports concerned

(31) In view of the absence of any cooperation from Chinese exporters, the price evolution of the imports from the People's Republic of China during the IIP has been established according to Eurostat data, on the basis of the average cif import prices. These prices increased by around 10 % during the IIP. In parti-

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cular, between 1994 and 1995, i.e. immediately after the imposition of the definitive anti-dumping measures, prices of DBM originating in the People's Republic of China in the Community increased by about 16 %. However, since 1996 these prices started to decrease, slightly but constantly, each year. Prices during the IIP were always above the minimum price. It should be noted that the average cif import price during the investigation period of the previous investigation was around 90 ECU/tonne.

(32) The price evolution of the imports originating in the People's Republic of China should be seen in the light of two main elements found during the investigation. Firstly, Eurostat data do not seem to be necessarily accurate. Indeed, import prices verified during the investigation on the basis of real transactions were always lower than the Eurostat figures. However, given that the imports thus verified could not be considered representative in terms of volume and value, Eurostat figures have been used to establish the price trend of Chinese imports.

(33) Secondly, the product mix exported by the Chinese exporters into the Community changed during the IIP as compared to the previous investigation. On the basis of data provided by the interested parties who cooperated or provided the Commission services with information, it was found that, after the imposition of the measures, the product concerned sold in the Community by the Chinese exporters always contained 90 % or more of MgO. By comparison, during the investigation period of the previous investigation, imports of DBM originating in the People's Republic of China with an MgO content lower than 90 % represented more than 50 % of total imports, i.e. the major part represented DBM of lower quality and was therefore less expensive, the minimum price having accordingly been calculated on this lower price basis. This indicates therefore that the price rise during the IIP can be explained by the fact that the Chinese exporters were selling a larger percentage of higher quality DBM.

(34) It should also be noted that prices of DBM originating in the People's Republic of China in the Community during the IIP were always lower than the prices of both the Community producers (see recital 35) and other third countries (see recital 59).

ii) Price behaviour of exporters

(35) In order to examine the Chinese exporters' price behaviour in relation to the one of the Community industry during the IP, and given the lack of cooperation of the Chinese exporters, the Commission services used two methods. Firstly, on the basis of Eurostat, the cif export price was compared to the applicant Community producers' weighted average price, adjusted to ex-works level, regardless of any specific MgO content. On this basis, the prices of DBM originating in the People's Republic of China were found to be lower than those of the Community industry.

(36) Secondly, and in view of the change in the product mix mentioned above (recital 33), it appeared more meaningful, in order to have a realistic picture of the market behaviour of the Chinese exporters, to compare the cif export price with the applicant Community producers' price of DBM with an MgO content equal to or higher than 90 %. On the basis of this approach, the sales prices of the Chinese exporters were indeed significantly lower than those of the Community industry.

(37) The development of prices of the DBM should also be considered in the light of the following. On the basis of information provided by one unrelated importer representing 13 % and 11 % of the total imports from the People's Republic of China Into the Community in 1995 and 1996, respectively, the price increase found for around half of the volumes imported by comparison

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to the original investigation period, appeared to be artificial, as shown by the following. This importer purchased DBM from Chinese exporters at a price lower than the minimum price of ECU 120/tonne. For the great majority of these imports, customs clearance was then undertaken by the clients of the unrelated importer (i.e. actual users of the product) on the basis of the resale price paid to the latter. In this resale price the unrelated importer included a certain margin in order to cover its expenses incurred in the Community and to earn a profit. By this operation, the gap between the purchase price paid to the Chinese exporter and the minimum price was filled. This operation entailed that the final price declared to the customs authorities by the client of the importer was higher than the minimum price, but the mechanism used to arrive at this final price also reveals that Chinese DBM could be sold in the Community at a price lower than ECU 120/tonne. In this respect it should also be taken into account that the original minimum price was determined at the level of the importers/traders purchase prices and not at the level of the final users purchase prices. The commercial practice described above seems, therefore, to affect the actual effectiveness of the measures. This commercial practice could also explain why Eurostat data showed figures higher than the actual prices verified during the investigation.

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

a) *Production*

(38) The Community industry's production of DBM decreased by around 33 % between 1994 and the IP. It should be noted that the decrease of the production was particularly strong between 1995 and 1996, coinciding with the contraction of the consumption of DBM in the Community market.

(39) The investigation established that the Community industry was forced, during the IIP, to change its product mix and to focus its production more on the lower grades of DBM. Nevertheless, it continued to produce a significant quantity (around 20 %) of DBM with an MgO content equal to or higher than 90 %.

b) *Production capacity*

(40) During the IIP, the production capacity of the Community industry remained stable.

c) *Capacity utilisation*

(41) Capacity utilisation decreased by 34 % between 1994 and the IP.

d) *Sales volume*

(42) The total sales volume of the Community industry decreased by around 36 % between 1994 and the IP. It should be pointed out that, whilst in 1995, after the imposition of the measures, the Community industry was able to benefit from the increasing demand (expanding its sales volume by around 3 %), in the IP, in spite of an increasing consumption of 13 % (see recital 28), it failed to follow this trend and its sales volume decreased by around 23 %.

e) *Market share*

(43) The Community industry's share on the Community market decreased by 37 % during the IIP. In this respect it should be noted that, while market shares held by the Community industry in the previous investigation fell from 30 % in 1988 to 15 % in the investigation period of the previous investigation, the negative trend slowed down after the imposition of the presently reviewed anti-dumping measures.

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f) *Price development*

(44) The investigation has shown that the applicant Community producers' average selling ex-works price of DBM rose by 23 % over the whole IIP. However, despite this increase, the Community industry was prevented from raising its prices to a profitable level, as described below (recital 46), and was only able to operate at a loss.

(45) The price development has to be analysed in the light of the above mentioned change in the product mix, which occurred during the IIP (see recital 39). Indeed, the Community industry progressively concentrated its production and sales on DBM of lower grades, which are cheaper to produce and thus can be sold at lower prices, to the detriment of the higher grades, which could be more profitable, but with which the Community industry could not compete against the Chinese price pressure. Even though overall prices have been rising, it was therefore not possible for the Community industry to reach a satisfactory price level.

g) *Profitability*

(46) The profitability of the Community industry, expressed as a percentage of net sales, although improving in absolute terms from (- 100) in 1994 to (- 28) in the IP, on indexed basis, remained negative during almost the whole IIP.

h) *Employment*

(47) Employment in the Community industry decreased by 31 % during the IIP.

i) *Investments*

(48) The applicant Community producers increased their rate of investment by around 78 % during the IIP. Although these figures are not exclusively related to the product concerned, since it was not possible to allocate the investments to DBM only, it was found that the investments were mostly destined to further rationalise the production process of DBM.

j) *Conclusion*

(49) After the imposition of the anti-dumping measures in 1993, and during the whole IIP, the situation of the Community industry improved as regards some of the economic indicators examined. In particular, its average sales price increased and its losses were reduced. Continued efforts to rationalise the production process and new investments were made, showing an industry that is still viable and determined to remain in operation.

(50) However, the other economic indicators did not develop as favourably during the IIP. Indeed, the Community industry was not able to increase production, capacity utilisation, sales volumes, market shares and employment to a satisfactory level.

(51) It is therefore concluded that the Community industry is still in a difficult situation.

4. **Impact of the imports concerned**

(52) The development of the market after the imposition of the measures reveals that the minimum price established in the previous investigation was not such as to discourage the Chinese exporters to sell in the Community market. Indeed, market shares of Chinese exporters increased during the IIP and their presence in the Community market became, as a whole, stronger than during the investigation period of the previous investigation. In addition, it should be noted that the Community industry has lost market share to almost the same extent as the People's Republic of China has gained it.

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(53) In line with the measures imposed, Chinese export prices increased during the current IIP and the price situation of the Community industry appeared to develop also more positively. However, as explained in detail above, not too much emphasis should be placed on this price increase. This development of prices should, however, also be seen in the light of, firstly, the shift from low grades to the more costly higher grades of MgO undertaken by the Chinese exporters (see recital 33). Secondly, it should be borne in mind that this change in product mix pushed the Community industry to progressively reduce sales volumes and production of the higher grades of DBM. As explained in recital 36, the price pressure of the imports concerned came to bear in particular on the higher grades of DBM, against which the Community industry was not able to compete (see also recital 45).

(54) In addition, it seems appropriate to mention the impact of the Chinese license system introduced in 1994, which most likely contributed to the increase of the Chinese prices world-wide (see recitals 73, 74 and 75 for details).

(55) The investigation has further shown that anti-dumping duties have been paid during the IP on at least 7 % of total Chinese imports of the product concerned, meaning that these exports were made at prices below the minimum price.

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

a) *Import volume and market share*

(56) The import volume of DBM from other third countries decreased in the IIP from about 178 500 tonnes in 1994 to around 166 500 tonnes in the IP. This is equivalent to a decrease of about 7 %.

(57) Market shares of the imports from other third countries decreased by two percentage points between 1994 and the IP. This decrease is even more marked between 1995 and the IP, even though there was a preceding increase between 1994 and 1995, exceeding the trend of the Community consumption (if the imports would follow the Community consumption the market shares would remain stable).

(58) The above shows that, during the IIP, the Chinese exporters were able to consolidate their position in the Community to the detriment not only of the Community industry (see recital 42), but also of other third countries.

b) *Sales prices of imports from third countries*

(59) According to Eurostat, the average sales price of imports from other third countries decreased by 9 % in the IIP. However, the unit price was on average always higher than for both imports originating in the People's Republic of China and sales of the Community industry.

(60) On the basis of the above, it is considered that imports of the product concerned from other third countries did not have any significant impact on the economic situation of the Community industry.

6. **Conclusion**

(61) In spite of the measures in force, due to the continued price pressure exerted by the Chinese exporters, the Community industry remained in a difficult economic situation. This price pressure prevented the Community industry from recovering from the effects of the previous and ongoing dumping practices. In this respect it should be noted that already two out of the four Community producers representing the Community industry in the previous investigation ceased their activity during the previous proceeding, entailing a significant loss of employment.

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Nevertheless, the investigation established that, as shown by their investments, the remaining Community industry is still viable and not ready to abandon this segment of production.

G. LIKELIHOOD OF RECURRENCE OF INJURY

1. Analysis of the situation of the People's Republic of China

(62) In order to assess the likely effect of the expiry of the measures in force, and taking into account that the Community industry is still in a difficult economic situation, the following elements were considered:

a) *Reserves, production capacity, capacity utilisation and stocks*

(63) In the absence of cooperation from the Chinese exporters, the analysis was based on information provided in the complaint as well as information obtained from specialised magazines and market research studies.

(64) As concerns reserves of magnesite, according to the above-mentioned sources, the People's Republic of China has the largest reserve found for an individual country, accounting for 17,3 % of the world-wide reserves.

(65) According to the same sources, production capacity of magnesia in the People's Republic of China during the last years was at approximately 2 500 000 tonnes/year, out of which 1 700 000 tonnes of DBM. This means that the People's Republic of China accounts for 28 % of the world-wide production capacity of DBM.

(66) As concerns capacity utilisation and stocks, no reliable information could be obtained in view of the non cooperation of any Chinese interested parties.

(67) Based on specialised publications and magazines available and given the sheer size of the raw material reserves and production capacity, it has been concluded that considerable potential exists for Chinese exporters to raise their production and export volumes to the Community in the future.

b) *Chinese exports to third countries*

(68) The Commission services also analysed, on the basis of the United States Department of Commerce's trade statistics, exports of DBM originating in the People's Republic of China to the United States of America, one of the most important export markets for the People's Republic of China. These imports accounted for 77 % of the world-wide imports of DBM into the United States of America in 1998.

(69) The total volume of exports originating in the People's Republic of China to the United States of America went up from around 263 000 tonnes in 1994 to around 292 000 tonnes in 1998, an increase of 11 %, and were at a peak of more than 320 000 tonnes in 1995. As to their prices, cif sales prices increased from a level of ECU 88/tonne in 1994 to ECU 117/tonne in the IP, i.e. an increase of 33 %.

(70) The investigation has shown an analogy in the Chinese behaviour in the United States of America and in the Community. In both markets, Chinese prices were in general among the lowest by comparison to imports from all other third countries, and this during the whole of the IIP.

(71) The abovementioned price of ECU 117/tonne in the IP is 23 % lower than the Chinese price charged in the Community during the same period and 2,5 % below the minimum price established by the preceding measures for the Community.

(72) From the above, it can be concluded that, in the absence of measures, Chinese prices could potentially fall at least to levels

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comparable to the prices for imports into the United States of America.

c) *The Chinese licence system*

(73) 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 equivalent to an export quota and tax system. All different sorts of magnesia, including DBM, have been covered by this licence system. In 1997, 18 Chinese companies received a licence to export magnesia up to a maximum volume of 2 Mio tonnes within the yearly licence and tonnage bidding round. The licence fee amounted to USD 30/tonne (ECU 26,5/tonne) in 1997 and increased to USD 40/tonne (ECU 36,6/tonne) in 1998. This implies that, if the minimum price of ECU 120/tonne is met, the actual export price of DBM to the Community without licence fee would be at ECU 83,4/tonne. According to Eurometaux, the Liaoning Province, where most of the producers are situated, in 1995 introduced a local export tax which in 1997 amounted to USD 15,7/tonne (ECU 14,4/tonne). Consequently, the actual sales price in the Community, when deducting the local tax as well, would be as low as ECU 69,4/tonne.

Eurometaux claims that the Chinese licence system for magnesite and thus DBM could be abolished soon and has argued that exports of DBM originating in the People's Republic of China would, as a consequence of the abolition, increase in volume and considerably decrease in price, should the anti-dumping measures not be continued.

(74) In this respect it should be noted that the analysis of the licence system carried out, given the significant amount of licence fees, underlines the potential of the Chinese exporters to sell DBM in the Community at very low prices.

(75) Furthermore, in view of the fact that the system described above is run autonomously by the government of the exporting country, it is considered that its existence or abolition cannot have any influence on the decision of the Community institutions whether or not injurious dumping would recur in the absence of measures.

2. **Conclusion on the recurrence of injury**

(76) In view of the above, namely of the following factors:

— despite the measures in force, the Community industry is still in a difficult economic situation;

— Chinese imports still hold an exceptionally strong position on the Community market and are made at dumped and low prices;

— the prices which Chinese exporters might charge in the absence of anti-dumping measures are potentially very low if one considers, on the one hand, the prices exclusive of the fees resulting from the Chinese license system, and, on the other hand, the Chinese behaviour in the United States market, where prices were always lower than in the Community;

— the large raw material reserves and the large Chinese capacities to exploit the raw material give an indication that the Chinese exporters have the potential to raise their production and/or export volumes;

— even though a minimum price was in force, in several cases transactions were made below the minimum price, thus giving an indication that Chinese exporters are fully capable of lowering their prices;

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On this basis it is concluded that, should the measures be repealed, there is a likelihood of recurrence of injury.

H. COMMUNITY INTEREST

1. Introduction

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

(78) In order to assess the likely impact of a continuation or non-continuation of the measures, the Commission requested information from all interested parties mentioned above. The Commission sent questionnaires to twelve importers and seventy-eight users of the product under consideration. No importers replied to the questionnaires, even though two of them provided some information. As to the users, two of them replied to the questionnaires and the data were verified.

(79) 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 are already in place. Consequently, the timing and nature of the present investigation allows the assessment of any undue negative impact the current anti-dumping measures may have had in the past on the parties concerned.

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

2. Interests of the Community industry

(81) It is considered that without maintaining the anti-dumping measures established in the previous investigation, the injurious dumping is likely to recur and the situation of the Community industry, already fragile, will further deteriorate.

(82) As shown above, the Community industry has been affected by the low priced imports of DBM originating in the People's Republic of China during the IIP. It is therefore considered that the objective of the anti-dumping measures under review, that is to re-establish fair competition in the Community market between the Community industry and the Chinese producers, has not been fully met.

(83) Although the Community industry has been making considerable efforts to improve its productivity in recent years, in an attempt to lower its costs of production and to enhance its competitiveness, it has not been able to increase its profit to a reasonable level during the IIP and, moreover, employment strongly declined. Furthermore, two Community producers in Greece who took part in the previous investigation ceased their activity.

(84) However, the investigation likewise established that the Community industry is viable, this being confirmed in particular by its consistent rate of investment during the IIP. Furthermore, the efforts undertaken in order to rationalise the production process show that the Community industry is determined not to abandon this segment of production.

(85) Given the above, it appears necessary to prolong the existing measures in order to ward off the adverse effects of dumped imports which could endanger the existence of the Community industry and consequently a number of jobs. It has also to be

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considered that if the Community industry disappears, there will also be a negative impact on the downstream industry, since the latter will see its choice of suppliers significantly reduced.

3. **Interests of importers**

(86) None of the unrelated importers replied to the questionnaire sent by the Commission. The lack of cooperation is in itself an indication that this sector did not suffer any substantial negative effect on its economic situation as a result of the measures. This is confirmed by the fact that the importers continued to trade the product concerned, even raising the volume imported during the IIP.

(87) It is therefore concluded that the economic situation of the importers of the product concerned has not been negatively influenced by the imposition of the anti-dumping measures currently in force. It is therefore also unlikely that a continuation of the measures would lead to a deterioration of their economic situation in the future.

4. **Interests of users**

(88) The users of the product under consideration, i.e. the downstream industry, are the refractories' producers. Only two out of the seventy-eight users to which the questionnaire was sent by the Commission replied. In the same way as for the importers, the low level of cooperation is in itself an indication that this sector did not suffer any substantial negative effect on its economic situation as a result of the measures. Although the representativity of the two cooperating companies for the downstream industry is limited, since one purchased only around 2 % of the total DBM imported from the People's Republic of China within the IIP, and the other one purchased, beginning in 1997, less than 1 %, the impact of the measures in force on their situation was evaluated.

(89) In this respect, the investigation established that the users continued, and in one case even started, to import DBM originating from the People's Republic of China in spite of the measures in force. These measures therefore did not constitute a deterrent for the producers of refractories leading them to change their sources of supply. While DBM constitutes a significant part of the cost of refractories, the increase of the Chinese import price was apparently not so high as to constitute any inconvenience.

(90) It is worth noting that the DBM import price of the user located in Finland almost doubled after Finland joined the European Community. Nevertheless, it continued to purchase DBM originating in the People's Republic of China. Two conclusions can be drawn from this:

(a) the measures have been effective as to a price rise of the imports originating in the People's Republic of China;

(b) the resulting price, compared to the price charged in the rest of the Community, continued to be competitive.

(91) On the basis of the above, it can be ruled out that the anti-dumping measures had any negative significant influence on the cost situation and on the profitability of the users of the product under consideration.

(92) As shown above (recitals 29 and 30), the result of the anti-dumping measures in force has not been to close the Community market to imports, but rather to combat the unfair trade practices and to remedy to some extent the distorting effects of dumped imports. Indeed, as mentioned above, imports from the People's Republic of China increased by 10 %, during the IIP.

Since the measures have been in place for a certain period and would be maintained at the same level, it can be concluded that

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this would not imply any deterioration of the situation of the users.

5. **Conclusion on Community interest**

(93) On the one hand, a continuation of the anti-dumping measures in force is likely to result in a stable price for DBM in the Community market. Leaving the Community industry without any protection against the effects of dumped imports would not only weaken its position, but could even lead to its disappearance. On the other hand, in the past, the existing measures appear not to have had any significant negative effects on the economic situation of users and importers. Any price increase, if at all, for users resulting from the imposition of anti-dumping measures, on the basis of the information collected during the current investigation, does not appear to be disproportionate when compared to the benefit to the Community industry achieved by the removal of the trade distortion caused by the dumped imports.

(94) Therefore, it is concluded that there are no compelling reasons against the prolongation of the existing anti-dumping measures.

I. **ANTI-DUMPING MEASURES**

(95) All parties concerned were informed of the essential facts and considerations on the basis of which the maintenance of the existing measures is based. They were granted a period within which to make representations subsequent to disclosures. No comments were received.

(96) It follows from the above that, as provided for by Article 11(2) of the Basic Regulation, the variable anti-dumping duties in combination with a minimum price of ECU 120/tonne on imports of DBM originating in the People's Republic of China imposed by Regulation (EC) No 3386/93 should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

(a) the difference between the minimum import price of EUR 120 per tonne and the net, free-at-Community-frontier price, before duty, in all cases where the latter is:

— less than the minimum import price, and

— established on the basis of an invoice issued by an exporter located in the People's Republic of China directly to an unrelated party in the Community (Taric additional code A439).

(b) zero, if the net, free-at-Community-frontier price, before duty, is established on the basis of an invoice issued by an exporter located in the People's Republic of China directly to an unrelated party in the Community and equal to or higher than the minimum import price of EUR 120 per tonne (Taric additional code A439).

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

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 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.

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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.

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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 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.