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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 825/2009

of 7 September 2009

amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks 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] (hereinafter referred to as basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) The Council, by Regulation (EC) No 1659/2005 [2] (hereinafter referred to as original Regulation), imposed a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China (PRC). The measures consist of an *ad valorem* duty rate of 39,9 %, with the exception of six companies expressly mentioned in the original Regulation which are subject to individual duty rates.

1.2. Request for a review

(2) Subsequent to the imposition of definitive measures, the Commission received an application to initiate a partial interim review of the original Regulation (hereinafter referred to as interim review), pursuant to Article 11(3) of the basic Regulation, from a Chinese exporting producer, Bayuquan Refractories Company Limited (hereinafter referred to as 'the applicant' or 'BRC'). The applicant did not participate in the investigation which led to the findings and conclusions laid down in the original Regulation (hereinafter referred to as the original investigation) and therefore the residual anti-dumping duty is applied to it.

(3) In its application for the interim review BRC claimed that it meets the criteria for market economy treatment (hereinafter referred to as MET) and individual treatment (hereinafter referred to as IT). BRC was purchased by the Vesuvius Group which resulted in changes in its corporate structure. The applicant argued that a comparison of its domestic prices and cost of production and export prices to the Community indicates that the dumping margin is substantially lower than the current level of measure. Therefore, it claimed that the continued application of the measure at its current level was no longer necessary to offset dumping.

1.3. Initiation of a partial interim review

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as BRC is concerned. The Commission published a notice of initiation on 12 June 2008 in the *Official Journal of the European Union* [3] and commenced an investigation.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 267, 12.10.2005, p. 1.
[3] OJ C 146, 12.6.2008, p. 27.

1.4. **Product concerned and like product**

(5) The product concerned by the interim review is the same as that described in the original Regulation, i.e. chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC (hereinafter referred to as the product concerned), currently falling within CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90 (TARIC codes 6815 91 00 10, 6815 99 10 20 and 6815 99 90 20).

(6) The product produced and sold on the Chinese domestic market and that exported to the Community, as well as that produced and sold in the USA, have the same basic physical, technical and chemical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

1.5. **Parties concerned**

(7) The Commission officially advised the Community industry, the applicant and the representatives of the exporting country of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to be heard. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(8) The Commission sent a MET claim form and a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and verification visits were carried out at the premises of the following companies:

— Bayuquan Refractories Co. Ltd. (the applicant), PRC,

— Vesuvius UK Co. Ltd. (related importer), UK,

— Vesuvius Iberica Refractories S.A. (related importer), Spain,

— Vesuvius Deutschland GmbH (related importer), Germany,

— Vesuvius Italia S.P.A. (related importer), Italy,

1.6. **Investigation period**

(9) The investigation of dumping covered the period from 1 April 2007 to 31 March 2008 (hereinafter referred to as 'investigation period' or 'IP').

2. **RESULTS OF THE INVESTIGATION**

2.1. **Market Economy Treatment (MET)**

(10) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports from the PRC, normal value shall be determined in accordance with Article 2(1) to (6) of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with International Accounting Standards (IAS) and applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— currency exchanges are carried out at market rates.

(11) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation by submitting a duly substantiated MET claim form within the given deadline. The information and data presented therein were subsequently subject to an on-spot investigation.

(12) The investigation established that the applicant did not meet MET criteria referred to in Article 2(7)(c) second and third indent of the basic Regulation. The company did not substantiate that it had one clear set of basic accounting records which were prepared and audited in compliance with IAS. Its financial statements and individual accounts showed breaches of IAS and accounting principles such as incorrect booking and depreciation of fixed assets and incorrect booking of accounts 'payable' and 'advanced payments'. The auditor did not mention these irregularities, and thus it was concluded that the financial statements were not audited in line with IAS. Furthermore, the company did not demonstrate that it was free from significant distortions carried over from the former non-market economy, in particular because the land use rights were obtained significantly below their market price.

(13) Based on the above facts and considerations, the applicant could not be granted MET.

(14) The Community industry, the applicant and the authorities of the exporting country were given the opportunity to comment on the findings concerning MET. Subsequently, the applicant and the Community industry submitted their comments.

(15) The applicant argued that the issues raised on its accounting records were not material and/or were subsequently corrected in 2008. It should be mentioned that the inconsistencies found in the accounts of the applicant for 2007 led to a significantly distorted picture of the applicant's financial situation. The inspection of the accounts for the IP revealed that the problems encountered in 2007 still existed in 2008. The claim made by the applicant that its accounting practices were changed at the end of 2008 could not be accepted since these changes occurred nine months after the IP and, in addition, could not be verified during the on-spot visit.

(16) The Community industry argued that the applicant failed on criterion one because the various export restrictions imposed by the Chinese Government on the main raw material to produce the product concerned led to distorted prices of that raw material on the domestic market. As a result the Chinese producers of magnesia bricks can obtain the raw material at better conditions compared to their competitors in other countries.

(17) For the investigation of this claim the purchase prices of the main raw material, magnesia, by BRC and publicly quoted prices for Chinese magnesia (source: Price Watch/ Industrial minerals) provided by the Community industry were examined. The comparison showed that the price difference in the IP could not be considered as significant. Moreover, it could be verified during the investigation that BRC was free to purchase magnesia from various suppliers, and that prices were negotiated without any State interference. On that basis it appears that any distortions concerning raw material prices did not have any significant impact on BRC during the IP.

(18) On the basis of the above, the findings and the conclusion that MET should not be granted to BRC are confirmed.

2.2. **Individual Treatment (IT)**

(19) Pursuant to Article 2(7) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria for IT set out in Article 9(5) of the basic Regulation. These criteria are set out in a summarised form below:

— in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits,

— export prices and quantities, and conditions and terms of sale are freely determined,

— the majority of the shares belong to private persons, and it must be demonstrated that BRC is sufficiently independent from State interference,

— exchange rate conversions are carried out at the market rate,

— State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(20) The applicant, as well as requesting MET, also claimed IT in the event of not being granted MET.

(21) The investigation showed that the applicant met all the above criteria. No facts were established during the investigation which would lead to the rejection of the IT claim of the applicant. It is therefore concluded that IT could be granted to BRC.

2.3. **Normal value**

(22) According to Article 2(7) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an analogue country.

(23) In the notice of initiation the Commission indicated its intention to use the United States of America (USA) as an appropriate analogue country for the purpose of establishing normal value for the PRC, as this analogue country was used in the original investigation. One producer in the USA agreed to cooperate in the investigation for the purpose of establishing normal value for BRC. No comments were received from the interested parties with regard to this proposal.

(24) Hence, pursuant to Article 2(7)(a) of the basic Regulation, the normal value for the applicant was established on the basis of verified information received from the cooperating producer in the analogue country.

(25) In order to ensure that normal values could be established for the vast majority of types exported from the PRC, in particular because the data of the analogue country was used, it was considered appropriate to adjust the criteria used to identify the different product types accordingly. The dumping calculations were, therefore, revised on the basis of the adjusted criteria.

(26) For the determination of normal value it was first established whether the cooperating US producer's total volume of domestic sales of the like product was representative in comparison with its total volume of export sales to the Community. In accordance with Article 2(2) of the basic Regulation domestic sales are considered representative when the total domestic sales volume was at least 5 % of the total volume of corresponding export sales to the Community. It was found that all sales by the US producer concerned on the domestic market were sold in representative volumes.

(27) Subsequently, those types of the like product sold on the domestic market that were identical and directly comparable to the types sold for export to the Community, were identified.

(28) For each product type sold by the cooperating producer in the USA on its domestic market and found to be directly comparable to the type of magnesia bricks sold by BRC to the Community, it was established whether US domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of magnesia bricks were considered sufficiently representative when the total domestic sales volume in the USA of that type during the IP represented 5 % or more of the total sales volume of the comparable type of magnesia bricks exported by BRC to the Community. It was found that all product types were sold in sufficient quantity on the domestic market to be considered representative.

(29) The Commission subsequently examined whether the domestic sales in the USA of each type of magnesia bricks sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the magnesia bricks type in question.

(30) Domestic sales transactions were considered profitable where the unit price of a specific product type was equal to or above the cost of production. Cost of production of each type sold on the domestic market of the USA during the IP was therefore determined.

(31) As a result of the above analysis, it was found that, except for one product type, all other types were sold in the ordinary course of trade in the USA. Thus, the normal value for these product types was established on the basis of all prices paid or payable on the domestic market of the USA for product types comparable to those exported to the Community by BRC. Normal value was established as the weighted average domestic sales price charged to unrelated customers in the USA.

(32) The majority of the product types exported by BRC to the Community were those with additional treatment and were not sold or not sold in representative quantities by the cooperating producer in the USA. Hence, normal value for these product types was based on sales in the USA, as described in recital (31) for corresponding product types without additional treatment, further adjusted to reflect the differences in physical characteristics of the product. The level of the adjustment was calculated on the basis of data provided and verified for the Community industry during the original investigation.

(33) For the only product type where domestic prices could not be used as mentioned in recital (31) above, another method had to be applied. In this regard, the Commission used constructed normal value. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. Pursuant to Article 2(6) of the basic Regulation, the amounts for SG&A and profit margin were based on the average SG&A and profit margin of sales in the ordinary course of trade of the like product.

2.4. **Export price**

(34) Since all export sales of BRC to the Community were made via related importers, the ex-works export price had to be constructed in accordance with Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to the first independent buyer in the Community, adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and for profits. In this regard the SG&A costs of the related importers were used.

(35) As regards a reasonable importer's profit to be used for this purpose, in the absence of data from unrelated importers, since the current interim review is limited to the examination of dumping in relation to one company, i.e. the applicant, the profit margin was based on the profit achieved by a cooperating unrelated importer from the original investigation.

2.5. **Comparison**

(36) The average normal value and the average export price for each type of the product concerned were compared on an ex-works basis and at the same level of trade and at the same level of indirect taxation. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. For this purpose, adjustments for transport costs, insurance, handling charges, credit costs, and actual anti-dumping duties paid were made where applicable and justified.

(37) The investigation has established that the VAT paid on export sales was not refunded. In the disclosure which was provided to the applicant pursuant to Article 20 of the basic Regulation, it was therefore indicated that both the export price and the normal value would be established on a VAT paid or payable basis. The applicant argued that this approach is not acceptable as it would increase the normal value by an amount exceeding the VAT amount which should have been deducted from the export price.

(38) Regarding this argument, it should be noted that during the review investigation period no VAT on export sales was refunded. Therefore, no adjustment in respect of VAT, neither to the export price nor to normal value, was necessary. In addition, the method used is neutral. Indeed it has the same effect, also if, for instance for certain products or transactions, a company sells to the Community at an export price which does not result in dumping. In other words, even assuming that the inclusion of VAT on both sides of the equation would increase the difference between the two elements, which would also be the case for those models for which there was no dumping.

2.6. **Dumping margin**

(39) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed no existence of dumping.

3. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

(40) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

(41) In this respect it is recalled that the applicant only sold a limited quantity of magnesia bricks at the end of the IP of the original Regulation and thus did not participate in the original investigation, therefore a residual duty of 39,9 % was applied to it. Subsequently, BRC which existed during the original investigation was purchased by the Vesuvius Group and it resulted in changes in the corporate structure of BRC.

(42) The applicant provided full cooperation in this interim review and the data collected and verified allowed to establish a dumping margin based on its individual export prices to the Community. The result of this calculation indicates that the continued application of the measure at its current level is no longer justified.

(43) Evidence obtained and verified during the investigation also showed that the changes in the applicant's corporate structure are to be considered lasting. No element emerged in the course of the investigation that would suggest otherwise. The circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the current review. Therefore it is concluded that the changed circumstances are considered to be of a lasting nature.

4. **ANTI-DUMPING MEASURES**

(44) In the light of the results of this review investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from BRC to 0 %.

(45) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend an amendment of Regulation (EC) No 1659/2005 and were given an opportunity to comment. The comments were taken into account where appropriate,

HAS ADOPTED THIS REGULATION:

Article 1

In the table in Article 1(2) of Regulation (EC) No 1659/2005 the following entry shall be inserted after the entry concerning Dashiqiao Sanqiang Refractory Materials Co. Ltd.

Manufacturer	Anti-dumping duty	TARIC additional code
'Bayuquan Refractories Co. Ltd Qinglongshan Street, Bayuquan District Yingkou 115007, Liaoning Province, PRC	0 %	A960'

Article 2

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

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

Done at Brussels, 7 September 2009.

For the Council
The President
E. ERLANDSSON