COUNCIL REGULATION (EC) No 826/2009

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] (basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, by Regulation (EC) No 1659/2005 [2] (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.

2. Request for review

(2) In 2008, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation (interim review). The request, limited in scope to the examination of dumping, was lodged by a Chinese exporting producer, Dashiqiao Sanqiang Refractory Materials Company Limited (DSRM or the applicant). The rate of the definitive anti-dumping duty applicable to products manufactured by DSRM is 27,7 %.

(3) In its request for the interim review the applicant claimed that the circumstances on the basis of which the measure was imposed had changed and that these changes were of a lasting nature. 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 would no longer be necessary to offset dumping. In particular, the applicant provided *prima facie* evidence showing that it meets the criteria for market economy treatment (MET).

3. Initiation

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate an interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as DSRM 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.

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, the magnesia component of which contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC (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.

5. Parties concerned

(7) The Commission officially advised the Community industry, the applicant and the authorities 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 request a hearing within the time-limit set out in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

[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. 30.

(8) A market economy treatment (MET) claim form and a questionnaire were sent to DSRM and its related companies, all of which replied within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) The PRC

— Dashiqiao Sanqiang Refractory Materials Co. Limited (the applicant), Dashiqiao, Liaoning Province,

(b) Italy

— Duferco Commerciale S.p.A., Genova,

(c) France

— Duferco, Aubervilliers,

(d) Switzerland

— Duferco SA, Lugano.

6. **Investigation period**

(9) The investigation of dumping covered the period from 1 January 2007 to 31 March 2008 (investigation period or IP).

B. RESULTS OF THE INVESTIGATION

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 paragraphs (1) to (6) of the said Article 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 was subsequently subject to an on-spot investigation.

(12) The investigation found that the applicant met all five MET criteria. It was found that during the IP, DSRM made its business decisions without any State interference or distortions related to non-market economy conditions. DSRM is subject to Chinese bankruptcy and property laws without any derogation. The company has one set of independently audited accounting records and accounting system and its practice was found to be in line with internationally accepted general accounting principles and IAS. Costs and prices were found to reflect market values and exchange rate conversions were carried out at market rates.

(13) Based on the above facts and considerations, the applicant could be granted MET.

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

(15) 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.

(16) For the investigation of this claim the purchase prices of the main raw material, i.e. magnesia, by DSRM and the 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 DSRM 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 this specific company during the IP.

(17) On the basis of the above, the findings and the conclusion that MET should be granted to DSRM are confirmed.

2. **Normal value**

(18) For the determination of normal value it was first established whether DSRM'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 is at least 5 % of the total volume of corresponding export sales to the Community. It was found that all sales by DSRM on the domestic market were sold in representative volumes.

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

(20) For each type sold by DSRM on the domestic market and found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sold in representative volume for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type exported to the Community.

(21) It was also examined whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers on the domestic market of each exported type of the product concerned during the IP.

(22) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the unit cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.

(23) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as the weighted average price of only the profitable domestic sales of the type in question made during the IP.

(24) Wherever domestic prices of a particular product type sold by DSRM could not be used in order to establish the normal value, 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 DSRM sales in the ordinary course of trade of the like product.

3. **Export price**

(25) Since all export sales to the Community were made via DSRM's related companies either in the Community or in Switzerland, 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.

(26) 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, the profit margin was based on the profit achieved by a cooperating unrelated importer from the original investigation.

(27) Further, to the final disclosure DSRM claimed that the SG&A ratio used when constructing the export price for one of its related importers did not reflect the reality, since it was calculated as a ratio of the total turnover without taking into account the fact that the majority of the sales made by this company were on a commission basis and that only the amount of the commission had been reported in the turnover.

(28) In this respect, the Commission re-examined the evidence collected during the inspection at the premises of this related importer. On this basis, the claim of DSRM was found to be warranted and the SG&A ratio used for the calculation of the constructed export price via this related importer was subsequently revised. This revised SG&A ratio was also found to be in line with the findings in respect of the other related importers.

4. **Comparison**

(29) 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 and loading charges, credit costs, and actual anti-dumping duties paid were made where applicable and justified.

(30) The investigation has established that the VAT paid on export sales was not refunded (not even partially, which was the case in the original investigation). 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 argues that this approach would be unlawful. Regarding his arguments, the following can be noted.

(31) Firstly, regarding the argument that in the original investigation another methodology was used (i.e. the deduction of VAT both from the normal value and the export price), it must be emphasised that the circumstances which were applicable during the review investigation period (RIP) were not the same as those applicable during the original investigation period. Whereas during the original investigation period, as stated above, VAT was partially refunded, which necessitated an adjustment pursuant to Article 2(10), during the RIP, 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. Even if this could be qualified as a change in methodology, it is justified under Article 11(9) of the basic Regulation since the circumstances have changed.

(32) The second argument which the applicant makes is that the method used in this review would artificially inflate the dumping margin. This argument cannot be accepted. The method used is neutral. It has the same effect, also if, for instance for certain products or transactions, the 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, that would also be the case for those models for which there was no dumping.

5. **Dumping margin**

(33) 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 the existence of dumping.

(34) DSRM's dumping margin expressed as a percentage of the net, free-at-Community-frontier price, duty unpaid, was found to be 14,4 %.

C. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

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

(36) In this respect it is recalled that in the original investigation DSRM did not obtain MET because its accounting was not in line with internationally accepted accounting principles and IAS. It was, however, granted individual treatment.

(37) On 8 December 2006, i.e. after the original investigation, DSRM became a Sino-foreign joint-venture with the Duferco group as foreign shareholder, with a 25 % ownership. The current investigation showed that this shareholding led to fundamental changes in DSRM's management and accounting practices. Indeed, DSRM acquired Duferco's know-how and support regarding management accounting and financial control and became part of Duferco's international sales network. Evidence obtained and verified during the investigation also shows that these changes in the applicant's corporate structure are of a lasting nature.

(38) In contrast to the original investigation, where the normal value was based on data obtained from the analogue country, the data collected and verified during the present review showed that DSRM could be granted MET and consequently the dumping calculation could be based on its own data. The result of this calculation indicates that the continued application of the measure at its current level is no longer justified.

(39) In the light of the above, it is therefore considered that the circumstances that led to the initiation of this 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 changes are considered to be of a lasting nature.

D. **ANTI-DUMPING MEASURES**

(40) In the light of the results of the investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from DSRM to 14,4 %.

(41) 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

The entry concerning the Dashiqiao Sanqiang Refractory Materials Co. Ltd. in the table in Article 1(2) of Regulation (EC) No 1659/2005 shall be replaced by the following:

Manufacturer	Anti-dumping duty	TARIC additional code
'Dashiqiao Sanqiang Refractory Materials Co. Ltd., Biangan Village, Nanlou Economic Development Zone, Dashiqiao City, Liaoning Province, 115100, PRC	14,4 %	A638'

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