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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1659/2005

of 6 October 2005

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed 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] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) On 13 April 2005, the Commission imposed, by Regulation (EC) No 552/2005 [2] (the provisional Regulation), a provisional anti-dumping duty on imports into the Community of certain magnesia bricks originating in the People's Republic of China (PRC).

(2) It is recalled that the investigation period of dumping and injury (IP) covered the period from 1 April 2003 to 31 March 2004. The examination of trends relevant for the injury analysis covered the period from 1 January 2001 to the end of the IP (period considered).

2. Subsequent procedure

(3) Following the imposition of the provisional anti-dumping duty on imports of certain magnesia bricks from the PRC, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the parties were examined, and, where considered appropriate, the provisional findings were modified accordingly. After the imposition of provisional measures, on-spot verification visits were carried out at the premises of

— Carboref GmbH, Germany (unrelated importer)

— Duferco, S.A., Switzerland (unrelated importer)

— Duferco La Louvière, Belgium (user)

— Refratechnik Steel GmbH, Germany (related importer).

(5) The Commission further disclosed all the essential facts and considerations on the basis of which it intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, taken into account for the definitive findings.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(6) It is recalled that, in recital 12 to the provisional Regulation, the product concerned was defined as chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC (the product concerned), normally declared within CN codes ex 6815 91 00, ex 6815 99 10. It was found in the further course of the investigation that CN code ex 6815 99 90 could also be legally used for imports of the product concerned.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 93, 12.4.2005, p. 6.

(7) The investigation has shown that the product concerned was also imported under CN codes ex 6815 10 10, ex 6902 10 00 and ex 6903 90 90 (ex 6903 90 20 before 1 January 2004) during the IP. However, CN codes falling within chapter 69, ceramic products, should only be used for fired products and not for the product concerned which is unfired. In addition, CN code 6815 10 10 includes products which are essentially characterised by carbon, whereas the product concerned is essentially characterised by the magnesium oxide content. Therefore, imports of the product concerned under these codes should be considered unacceptable should they be used. In order to prevent misclassifications in the future, and to ensure that the codes will be correctly used, the customs authorities have been alerted via a special risk information form.

(8) One interested party argued that only the CN codes 6815 91 00 and 6815 99 10 were mentioned in the notice of initiation and that the investigation could, therefore, not be extended to the additional codes. However, CN codes which are mentioned in the notice of initiation are given for information only and are not binding, as it is the product description, in particular the physical and chemical characteristics, which is relevant for the scope of the investigation. Consequently, all types of magnesia bricks sharing the same basic physical and chemical characteristics and having basically the same use, should be covered by the investigation, regardless of their customs classification. The scope of the investigation has thus not been extended. The investigation has clarified that the product concerned should legally be imported under CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90. If, however, it was found that the product concerned was mistakenly declared under a different CN code, the investigation also covered that product.

(9) In the absence of any other comments regarding the definition of the product concerned and the like product, it is therefore concluded that the product concerned is defined as chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC, declared within CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90. Findings in recitals 13 to 16 to the provisional Regulation are also confirmed.

C. **DUMPING**

1. **General methodology**

(10) The general methodology used to establish whether the imports into the Community of the product concerned were dumped was described in the provisional Regulation. The general methodology as set out in particular in recitals 35, 45 and 61 to the provisional Regulation is hereby confirmed.

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

(11) As mentioned in recital 28 to the provisional Regulation, one exporting producer failed to provide conclusive proof that its assets were valued independently and recorded at market value. It did not demonstrate that all costs were taken into account at market value. The exporting producer reiterated the same claims after adoption of the provisional Regulation. Although it failed to respect the extended deadlines, it claimed that it had provided new evidence concerning the assets valuation, justifying a reconsideration of the rejection of MET.

(12) It should be noted that the said exporting producer did not provide the documents requested within the deadlines, which would be sufficient to reject its claims. Nevertheless, an examination of the documents received indicated that no new evidence was provided to support these claims. Thus, even if these documents could be taken into consideration, they would not change the findings of the provisional Regulation. The decision not to grant MET to this exporting producer is therefore confirmed.

(13) Similarly, two other exporting producers to whom MET had been refused reiterated their objections raised at the provisional stage. However, no new evidence was provided which would justify any change in the decision.

(14) In the absence of other comments, the findings concerning MET set out in recitals 17 to 28 to the provisional Regulation are confirmed.

3. **Individual treatment (IT)**

(15) The companies not granted IT provided no new evidence proving that they should be granted IT. Therefore, and in the absence of any other comments on IT, the findings as set out in recitals 29 to 34 to the provisional Regulation are hereby confirmed.

4. **Normal value**

4.1. *Determination of normal value of all exporting producers not granted MET*

(a) Analogue country

(16) As set out in recital 39 to the provisional Regulation, the Commission sought cooperation from 38 known producers around the world. However, cooperation was only obtained from two producers in the United States of America. The investigation did not show any reason why the information received and verified was not suitable for this proceeding.

(17) Some interested parties argued that the USA was not an adequate analogue country for establishing the normal value for the PRC. They claimed that with only three producers on the US domestic market the competition was insufficient. In this respect, it is recalled that, as set out in recital 40 of the provisional Regulation, the investigation showed that the USA have a competitive market for the product concerned with at least three producers, around 30 suppliers, more than 15 importers and approximately 300 users. This claim was therefore rejected.

(18) Since these claims were not further substantiated and in the absence of any further comments on this issue, the choice of the USA as the analogue country is hereby confirmed.

(b) Determination of normal value

(19) Some exporting producers claimed that clerical errors were made in the definitive dumping calculations. Other specific claims concerning the ocean freight costs, the insurance cost, export surcharge and the credit rate used in the calculations were also made by exporters.

(20) Following an examination of these claims, it was found that some clerical errors occurred in the calculations. These were corrected. Some other claims concerning ocean freight, the insurance costs and the export charge could also be accepted as far as they were justified and substantiated. All other claims had however to be rejected.

(21) For the reasons stated below, some interested parties argued that the normal value from the USA should be adjusted downward.

(22) Firstly, it was claimed that the Chinese producers have a different cost structure, especially with regard to certain costs including labour and electricity. It must be noted that this claim is irrelevant in the context of the assessment of normal value in the analogue country as any such adjustment on the costs would render the investigation in the analogue country meaningless and it would lead to adjust the normal value to non-market economy levels. Moreover, this claim was not substantiated by any evidence. Therefore, it had to be rejected.

(23) Secondly, it was argued that one of the two cooperating producers in the USA is linked to one of the complainant companies in the Community. It is recalled that normal value in the analogue country was established on the basis of the data provided by two companies in the USA. This data was closely analysed and verified on spot. On this basis, it was concluded that the relationship between one of those companies and a complainant company did not affect the reliability of the data used for the establishment of normal value. No indications were found during the investigation that this relationship had any influence on the normal value in analogue country.

(24) Finally, following substantiated claims by a number of exporters, normal value was adjusted downwards due to (i) differences in quality of the raw material used by the producers in the analogue country as compared to that used by producers in the PRC; (ii) the higher costs of transport and other charges; and (iii) importation costs associated with the purchases of these raw materials by the US producers. It was also found that certain types of treatment of the bricks were done in the USA but not in China. Furthermore, the investigation showed that an adjustment concerning the level of trade was also warranted.

(25) In the absence of any other comments, recitals 42 and 43 of the provisional Regulation are confirmed.

4.2. *Determination of normal value of all exporting producers granted MET*

(26) At the provisional stage, the normal value for companies granted MET was established for each type of magnesia bricks. These types could be identified by a Product Control Number (PCN). For companies granted IT, however, groups of PCNs were established based on MgO content for the purpose of establishing the normal value.

(27) At the definitive stage, it was considered that the methodology should be streamlined so as to ensure consistency between exporting producers granted MET and other producing exporters. Accordingly, the groups of PCNs on MgO basis were also applied to calculate the normal value for producers granted MET.

5. **Export price**

(28) One exporting producer claimed that errors were made in the level of SG & A and profit of a related importer.

(29) After verification, it was found that the claim with regard to the SG & A could be accepted as a clerical error occurred at the provisional stage. However, the claim related to the level of the profit was not founded as the level used in the calculations was based on that of unrelated importers and traders verified during the investigation. The claim on the profit was therefore rejected.

(30) Another exporting producer claimed that the profit margins deducted for its related companies were excessive and provided evidence that the actual profit was at a lower level. It was also claimed that the profit should be deducted once for the last related trader only and not for intermediate related traders. In addition, it claimed that the calculation of the deduction of the export VAT should be based on the cost of raw materials and not on the export price of the goods.

(31) Based on the new evidence provided, the profit margin for the related traders was corrected on the basis of data from other unrelated traders. The claim concerning the export VAT, however, was rejected as the company did not provide any evidence supporting its claim.

(32) Contrary to its position at provisional stage, one exporting producer granted IT claimed at a very late stage in the investigation that it was related to a Community importer and requested that its dumping margin be revised accordingly. It claimed that its dumping margin should be calculated starting from the resale price of the allegedly related importer. Although the exporting producer and the Community importer acknowledged that they did not have any legal link to clearly establish their relationship, they claimed that they should nevertheless be considered related because of their long term cooperation in the business of magnesia bricks.

(33) However, the companies mentioned did not provide any new evidence that would lead to the conclusion that they are related in the sense of the basic Regulation. In addition, the Community importer had a similar relationship with another Chinese exporter, but did not claim the same relationship for this exporter. On this basis, there is no reason to change the provisional conclusion that these companies are not related. The claim is therefore rejected.

(34) At the provisional stage, the export price for companies granted MET was established at the level of PCN but for companies granted IT groupings to PCNs on MgO basis were applied to the export price. At the definitive stage, the Commission streamlined the methodology to ensure consistency and groupings to PCNs on MgO basis were applied to calculate the export price for producers granted MET as well.

(35) In the absence of any other comments, the provisional findings set out in recitals 59 and 60 of the provisional Regulation are hereby confirmed.

6. **Comparison**

(36) In the absence of substantiated claims, the provisional findings as described in recitals 61 and 62 of the provisional Regulation are herewith confirmed.

7. **Dumping margin**

7.1. *For the cooperating exporting producers granted MET/IT*

(37) The definitive weighted average dumping margins expressed as a percentage of the CIF Community frontier price, duty unpaid, are:

Liaoning Mayerton Refractories Co. Ltd	2,7 %
Yingkou Sanhua Refractory Materials Co. Ltd	8,1 %
Yingkou Guangyang Refractories Co. Ltd	18,6 %
Yingkou Kyushu Refractories Co. Ltd	18,6 %
Dashiqiao Sanqiang Refractory Materials Co. Ltd	27,7 %
Yingkou Qinghua Refractories Co. Ltd	22,2 %

7.2. *For all other exporting producers*

(38) Due to new data made available on import quantities, the level of cooperation was recalculated and found to be higher than provisionally established. None the less, it is to be confirmed that the level of cooperation was low.

(39) At the provisional stage the country-wide dumping margin was set at the level of the highest margin established for the cooperating producers. However, at the definitive stage the calculation methodology of the country-wide margin was revised in line with the consistent practice of the Commission in case of low cooperation. The country-wide dumping margin was therefore re-assessed as a weighted average of:

(a) the dumping margin found for the representative group of the product concerned exported by the only cooperating exporting producer not granted MET or IT; and

(b) the highest dumping margin found for the representative group of the product concerned exported by the same cooperating exporter.

(40) Accordingly, the country-wide dumping margin was definitively set at 51,5 %.

D. **INJURY**

1. **Community production**

(41) In the absence of any new comments submitted, the provisional findings concerning the total Community production as set out in recital 68 of the provisional Regulation are hereby confirmed.

2. **Definition of the Community industry**

(42) Several interested parties argued that the Community producer RHI should be excluded from the Community industry, contrary to the conclusion in the provisional Regulation. These parties claimed that RHI's core business is not situated in the Community and that its volume of imports in the IP is almost the same as that of the Refratechnik group (Refratechnik), another importing producer which was excluded from the Community industry.

(43) It is recalled from recital (70) in the provisional Regulation that RHI's biggest production sites as regards the product concerned as well as its headquarters and R & D centre are situated in the Community. Also it was clear that RHI's Community production company was a separate legal entity from its Chinese production company. Even if RHI is a global group and has a production site in the PRC under a separate legal entity, it still produces the vast majority of its magnesia bricks, which are subsequently sold on the Community market, at its Community production sites. As only a small proportion of its sales on the Community market are imported from the PRC, RHI is not shielded from the dumped imports and the economic benefit it might obtain from these imports, if any, are minimal. Therefore, there is no compelling reason why RHI should be excluded from the Community industry.

(44) Moreover, it was found that any comparison with the situation of Refratechnik is not appropriate. First of all, not being either a complainant or supporting the complaint, Refratechnik could not be included in the definition of Community industry. Furthermore, in contrast to the RHI situation discussed above, although Refratechnik imported similar absolute volumes, these represented a much larger percentage of their sales on the Community market. It is recalled that (i) almost half of Refratechnik's sales on the Community market were produced in the PRC; (ii) the core business as regards the product concerned had partly relocated to China, and (iii) Refratechnik clearly benefited from the sales of the imported products. In all of these elements Refratechnik was substantially different from RHI. For these reasons, the claims had to be rejected and it is confirmed that RHI is part of the Community industry.

(45) In the absence of any other comments submitted, the definition of the Community industry as set out in recitals 69 to 78 of the provisional Regulation is hereby confirmed.

3. **Community consumption**

(46) In the absence of any comments submitted, the calculation of Community consumption as set out in recitals 79 to 82 of the provisional Regulation is hereby confirmed.

4. **Imports into the Community from the PRC**

4.1. *Market share of imports concerned*

(47) In the absence of any comments submitted, the findings on market share of imports concerned as set out in recitals 83 and 84 of the provisional Regulation are hereby confirmed.

4.2. *Prices of imports and undercutting*

(48) It is recalled that, as set out in recitals 85 to 87 of the provisional Regulation, a comparison was made between the ex-works prices of the Community industry and those of the exporting producers in the country concerned at cif Community frontier level.

(49) Bearing in mind the revised methodology for underselling margins at recital (86) below, it was also considered appropriate to similarly revise the undercutting methodology. The revised undercutting margins for the exporting producers which were granted MET or IT were in the range of 13 to 37 %. The average undercutting was calculated at 23,9 %.

(50) Apart from the adjustments made as set out in recital 49, and in the absence of any other comments, recitals 85 to 87 of the provisional Regulation concerning prices of imports and undercutting are confirmed.

5. **Situation of the Community Industry**

(51) It is recalled that in recital 111 of the provisional Regulation, it was provisionally established that the Community industry had suffered material injury within the meaning of Article 3 of the basic Regulation.

(52) Several interested parties questioned the interpretation of the figures relating to the situation of the Community industry as presented in recitals 88 to 111 of the provisional Regulation. They stated that the figures did not show any material injury. These parties claimed that the Community industry is making profits, that they are competitive and that their business perspectives are very positive. This should lead to the conclusion that the Community industry has not suffered material injury.

(53) It is noted that none of the interested parties questioned the figures relating to the situation of the Community industry as such, but rather their interpretation. Indeed, when looking solely at certain volume indicators such as production, market share or sales on the Community market, isolated from other indicators, these do not show a very negative trend.

(54) However, it is recalled that the Community industry responded to the dumped imports over the period considered by reducing its prices in order to maintain its volume of sales on the Community market. This caused a large fall in profitability. In such circumstances, the injury is consequently reflected particularly in prices and profitability.

(55) In addition, when analysing the development of the Community industry's economic indicators between 2001 and the IP, one must bear in mind that the Community industry had already restructured in order to decrease overcapacities and in order to rationalise in the 1990's. At the beginning of the period considered (2001) the Community industry was in a stable economic position and making reasonable profits. However, as can be seen from the substantially decreasing developments in profitability of Community sales (recital 98 of the provisional Regulation) and decreasing average sales prices (recital 94 of the provisional Regulation), the situation deteriorated significantly between 2001 and the end of the IP.

(56) As regards the slightly improving situation in the IP, it is recalled that this was achieved by a further reduction in costs and that the improved situation in the IP was still far from the level that could be achieved in the absence of dumped imports (recital 99 of the provisional Regulation).

(57) In the absence of any other comments submitted in addition to the above, the findings in respect of the situation for the Community industry, as set out in recitals 88 to 111 of the provisional Regulation, are hereby confirmed.

6. **Conclusion on injury**

(58) In view of the above, and in the absence of any other comments, it is confirmed that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

E. **CAUSATION**

1. **Impact of the imports from the PRC**

(59) One interested party alleged that the imports did not have an effect on the Community industry as market share and sales volume were stable during the period considered. However, it was found that the Community industry suffered material injury (recital (58)) and that they could only keep their market share at the expense of substantial price reductions which led to a 55 % fall in profitability. This development coincided with the increased imports. It is recalled that import volumes from the PRC increased by around 150 % and their market share increased by 118 % during the period considered. In addition, import prices from the PRC fell by 22 % and substantial price undercutting was taking place (recital 49). Therefore, and since the claim was not further substantiated, this argument had to be rejected. In the absence of any other comments, the findings of recital 113 are hereby confirmed.

2. **Impact of developments within the steel industry**

(60) One interested party alleged that the technical progress resulting in longer lasting bricks and an efficient steel making process were causing the injury suffered by the Community industry and that this was not taken into account sufficiently in the provisional Regulation.

(61) It is recalled in this respect that, based on data obtained from the user industry, the decrease of magnesia bricks used per tonne of steel produced was calculated at around 2 % in the IP (recital 116 of the provisional Regulation). In addition, it was found that Community consumption was stable during the period considered (recital 82 of the provisional Regulation). On the basis of these figures, it can be concluded that the technical progress could only have had a minor impact, if any, on the situation of Community industry. The argument should therefore be dismissed.

3. **Impact of currency changes**

(62) Another factor which was claimed to have caused the injury is the falling currency exchange rate of the dollar (which is linked to the Chinese RMB) against the Euro. The dollar depreciation against the Euro amounted to around 31 % in the period considered.

(63) It is recalled that dumping was established comparing all prices on a RMB basis and therefore the currency exchange rate did not have an influence on the dumping margins found. As regards the injury margins, the dollar depreciation may have encouraged increased exports to the Community of the product concerned. However, irrespective of whether the low prices may also be somewhat due to currency movements, the full difference between the prices of the Community industry and those of the exporting producers (see recital 49) constitutes the level of undercutting which is to be taken into account. The magnitude of the injury margins in this case show that the dollar depreciation could hardly have contributed to the injury suffered by the Community industry.

4. **Impact of imports to the Community by the Community industry**

(64) One interested party argued that the imports from the PRC by RHI were causing the injury found. It should be noted that only 5 % of the total sales volume of RHI was imported from the PRC (recital 121 of the provisional Regulation) and that these imports were sold at prices comparable to those of the Community industry in the Community. It is, therefore, concluded that these imports did not cause the injury found.

5. **Impact of exports by the Community industry**

(65) One interested party claimed that the loss in exports due to the currency fluctuation of the US dollar and the resulting reduction in production caused the injury. It is, however, recalled that exports only fell slightly over the period considered and that their profitability was higher than that of the sales on the Community market (recital 122 of the provisional Regulation). It is, therefore, highly unlikely that these exports could have had a substantial negative impact on the Community industry.

6. **Impact of other factors**

(66) One interested party alleged that the disadvantage of the Community industry, due to the fact that the magnesia resources are mainly located in the PRC, was a cause of the injury. While it is true that the mines for the main raw material are situated in the PRC leading to a cost and a strategic advantage for the producers in the PRC, such differences, which result in cost advantages, have in any event been taken into account in price comparisons.

7. **Conclusion on causation**

(67) In the absence of any other comments on causation, the conclusions drawn in this respect in recitals 112 to 124 of the provisional Regulation are hereby confirmed.

F. **COMMUNITY INTEREST**

1. **Interest of the Community industry**

(68) In the absence of any comments submitted with respect to the interest of the Community industry, the findings as set out in recitals 125 to 129 of the provisional Regulation are hereby confirmed.

2. **Interest of importers**

(69) Two unrelated importers and one related importer provided submissions as a result of the provisional disclosure. A further importer which had not cooperated in the proceeding also submitted comments opposing the provisional measures on the grounds that they would have a negative impact on their turnover, employment and profitability because the product concerned represented a substantial proportion of their business. These four importing companies represented around 35 % of total imports in the IP. The companies did not, however, present any new evidence that could change the Community interest conclusions as shown in the provisional Regulation.

(70) Further arguments submitted by the importers which coincided with those of the users are discussed under recitals 73 to 82.

(71) In the absence of any other comments, the findings set out in recitals 130 to 132 of the provisional Regulation concerning importers' interests are confirmed.

3. **Interest of suppliers**

(72) In the absence of any comments submitted with respect to the interest of the Community suppliers, the findings as set out in recital 133 of the provisional Regulation are hereby confirmed.

4. **Interest of users**

4.1. *Market structure*

(73) The majority of users, importers and exporting producers reiterated the argument that measures would strengthen a market structure consisting of a few important producers and thus reduce competition. Although no new arguments were made in this respect, some additional material was provided to support this claim.

(74) It is recalled that the largest producer on the Community market did not have a majority market share in the IP for the product concerned (recital 141 of the provisional Regulation). This share was calculated on the basis of verified data. It was contested by one interested party, but no substantiated evidence was given that the market share is higher than the above figure. In addition, no substantial evidence of any anti-competitive behaviour of the large players on the Community market has been provided by any of the interested parties which could support the allegation. Moreover, several other Community producers produced the product concerned. In the absence of any other comments, the finding described in recitals 140 and 141 of the provisional Regulation are therefore confirmed.

4.2. *Shortage of supply and increased costs*

(75) It was claimed that the measures would lead to a shortage of supply of the product concerned in the Community market as the exporting producers would stop exporting it to the Community due to the measures. This argument was not substantiated by any documentary evidence. It should be noted here that the number of available sources of supply in the PRC and in the Community makes it unlikely that any shortage of supply could occur. This argument is therefore unfounded.

(76) It was also claimed that raw material suppliers may be forced to reduce exports to the Community due to factors such as electricity shortages in the PRC, where the majority of magnesite raw materials are sourced. It was alleged that consequently prices for magnesite started to increase in 2005, leading to a shortage of the raw material on the Community market. It is clear that supply by the PRC of the raw materials necessary to produce magnesia bricks may vary depending on internal factors and may lead to increased prices for magnesite. However, this will impact equally on Community producers which use magnesite of Chinese origin as it will impact on Chinese producers of magnesia bricks. These arguments are therefore not relevant for assessing the impact of the imposition of anti-dumping measures.

(77) The user industry also expressed its concern that measures would lead to a substantial cost increase for magnesia bricks and that this should be taken into account when considering the cost effect of measures on the steel industry. However, the steel industry did not generally question the fact that magnesia bricks account for significantly less than 1 % of their total costs (recital 143 of the provisional Regulation). Nevertheless, they pointed out that consideration should be given to the fact that (i) the product is of strategic importance; (ii) technical failure of magnesia bricks could cause substantial additional costs; and (iii) prices are likely to increase considerably due to other factors.

(78) It was already noted in the provisional Regulation in recital 135 that refractories are a strategically very important consumable material for the steel industry as all steel has to pass through its converters, furnaces and ladles. Consequently, refractory failure could cause material damage in terms of interrupted production, repairs and safety. Therefore, sufficient supply in high quality, i.e. long lasting bricks, and good technical support is a very important factor for the steel industry.

(79) Although it important to consider whether a material is strategically or otherwise important, its cost in comparison to the total cost of production is also a substantial issue in a Community interest analysis. Hence, the undisputed fact that the cost of magnesia bricks is less than 1 % of the total cost of production of steel remains a decisive factor.

(80) In this respect, it should also be pointed out that it is not the purpose of the anti-dumping measures to prohibit imports but to increase prices to a sustainable, non-injurious level. In view of the level of the measures (with a weighted average of around 20 %), it is likely that Chinese non-injurious imports will still enter the market and provide for a valid competition. Other third countries also provided possible sources of supply, even if in the IP these were at low volumes.

(81) It should also be recalled that if measures are not imposed, there is a risk of a transfer of the Community production of the product concerned to the PRC in the long-term. Bearing in mind the lack of important producers in other third countries and that the product concerned is of strategic importance for the steel industry, such a reliance on Chinese imports is clearly not a viable scenario for the Community steel industry. This consideration of the provisional Regulation (recital 138 of the provisional Regulation) was doubted by an importer and one steel company. It was, however, not contested by the large majority of the steel industry, leading to the conclusion that it is also in their interest that a viable magnesia bricks production rests within the Community.

(82) In the absence of any further comments submitted with respect of the claimed disruption in the market structure and increased costs, the findings as set out in recitals 140 to 143 of the provisional Regulation are hereby confirmed.

4.3. *Conclusion on users' interest*

(83) In the absence of any further comments submitted with respect of the users' interest, the findings as set out in recitals 134 to 144 of the provisional Regulation are hereby confirmed.

5. **Conclusion on Community Interest**

(84) In view of the conclusions drawn in the provisional Regulation and taking into account the submissions made by the various parties, it is concluded that there are no compelling reasons not to impose definitive anti-dumping measures against dumped imports of magnesia bricks originating in the PRC. The conclusion as set out in recitals 145 and 146 of the provisional Regulation is therefore confirmed.

G. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(85) In the provisional Regulation, the injury elimination level was calculated using 5 groups of PCNs depending on the MgO content of the bricks. This methodology was first mentioned in the questionnaires sent out at the initiation of this investigation and interested parties were invited to comment. Adjustments to this methodology were claimed and investigated as set out in recitals 86 to 88.

(86) In the provisional Regulation a standard adjustment was made to the cif export prices in order to cover post importation costs, importer costs and level of trade. Subsequent investigation has shown that these adjustments should be revised in order to accurately reflect the costs associated with each channel of sale. The injury elimination margins calculated are shown at recital (90).

(87) A users' association claimed that the difference in costs for resin or pitch, which is used as binder for magnesia bricks was not taken into account in the calculations. While it is true that the costs for pitch, which is mainly used in the Community production are lower than for resin, it has been claimed in a substantiated way by the Community producers that the higher costs for the slightly more elaborated production process for pitch absorb the difference. No substantiated evidence has been provided in this investigation as to disprove these findings. This claim was therefore rejected.

(88) Furthermore, it was claimed by one user that a difference existed within the PCN groupings outlined in recital (85) between bricks used in converters and bricks used in ladles. The Community industry sold a higher percentage of the higher priced converter bricks than the exporting producers in the PRC. The user argued that this issue should be better reflected in the price comparisons. However, this claim was not substantiated as it was not made clear which PCNs were affected and to what extent. This claim was therefore rejected.

(89) It is recalled that the non-injurious price was calculated using a profit margin of 8 %. This figure was not contested by any interested parties and it is therefore definitively confirmed.

(90) The definitive weighted average injury margins for companies granted either IT or MES are:

Dashiqiao Sanqiang Refractory Materials Co. Ltd	42,5 %
Liaoning Mayerton Refractories Co. Ltd	22,7 %
Yingkou Guangyang Refractories Co. Ltd	27,7 %
Yingkou Kyushu Refractories Co. Ltd	27,7 %
Yingkou Qinghua Refractories Co. Ltd	15,3 %
Yingkou Sanhua Refractory Material Co. Ltd	48,2 %

(91) Following the various adjustments mentioned above that have been made to the normal value and export prices, the injury elimination level established on the basis of data of cooperating companies not granted MET or IT and non-cooperating companies was found to be 39,9 %.

(92) In the absence of any further comments, other than the amendments discussed above, the methodology set out in recitals 147 to 152 of the provisional Regulation is hereby confirmed.

2. **Definitive measures**

(93) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margin or at the level of the injury margin calculated in all cases, where it is lower than the dumping margin found.

(94) On the basis of the above, the definitive duties should be as follows:

Company	Injury elimination margin	Dumping margin	Proposed anti-dumping duty
Dashiqiao Sanqiang Refractory Materials Co. Ltd	42,5 %	27,7 %	27,7 %
Liaoning Mayerton Refractories Co. Ltd	22,7 %	2,7 %	2,7 %
Yingkou Guangyang Refractories Co. Ltd	27,7 %	18,6 %	18,6 %
Yingkou Kyushu Refractories Co. Ltd	27,7 %	18,6 %	18,6 %
Yingkou Qinghua Refractories Co. Ltd	15,3 %	22,2 %	15,3 %
Yingkou Sanhua Refractory Material Co. Ltd	48,2 %	8,1 %	8,1 %
All other companies	39,9 %	51,5 %	39,9 %

(95) The individual anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies specifically mentioned. Imported products produced by any other company not specifically mentioned by its name and address in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(96) Any claim requesting the application of these individual anti-dumping duty rates (e.g following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Commission will, after consultation of the Advisory Committee, propose the amendment of the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

[1] European Commission, Directorate-General for Trade, Direction B, Office J-79 5/16, B-1049 Brussels.

3. **Undertakings**

(97) During the course of the investigation, five exporting producers in the PRC expressed interest in offering an undertaking. However, only three exporting producers finally offered price undertakings in accordance with Article 8(1) of the basic Regulation.

(98) One of the companies has not cooperated in the investigation. Therefore, this undertaking offer had to be rejected.

(99) Another company which had been granted individual treatment offered a joint undertaking together with an unrelated Swiss based trader. A joint undertaking offer with an unrelated company has normally to be rejected since the presence of the unrelated trader renders the monitoring of financial flows impracticable. In addition, the unrelated trader is either directly or indirectly related to most of its EU-clients. All this leads to a very complex corporate structure that would not allow to efficiently monitor the financial flows and thus the prices finally paid. Therefore, such an undertaking is considered as being neither enforceable nor effective. Thus, the offer had to be rejected.

(100) Another exporting producer, which had been granted individual treatment, offered together with its related trader in the PRC, a joint price undertaking combined with a quantitative ceiling. They have agreed to sell the product concerned within the quantitative ceiling at or above price levels which eliminate the injurious effects of dumping. Imports beyond the quantitative ceiling will be subject to anti-dumping duties. The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertaking can be monitored effectively by the Commission. Furthermore, the sales structure of these companies is such that the Commission considers that the risk of circumventing the agreed undertaking is limited.

(101) To further enable the Commission to effectively monitor the compliance of the companies with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on the presentation of a commercial invoice containing at least the elements listed in the Annex. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that shipments correspond to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty will instead be payable.

(102) To further ensure the effective respect of the undertaking, the importers should be made aware that any violation of the undertaking may lead to the retrospective application of the anti-dumping duty for the relevant transactions. Therefore, it is necessary to implement legal provisions providing for the incurrence of a customs debt at the level of the appropriate anti-dumping duty whenever one or more conditions for the exemption are not respected. A customs debt should therefore be incurred whenever the declarant has chosen to release the goods for free circulation, i.e. without collection of anti-dumping duty, and one or several conditions of that undertaking are found to have been violated.

(103) In the event of a breach, the anti-dumping duty may be recovered, provided that the Commission has withdrawn the acceptance of the undertaking in accordance with Article 8(9) of the basic Regulation, by referring to that particular transaction and, as the case may be, by declaring the relevant undertaking invoice as invalid. Therefore, pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.

(104) In view of this, the offer of an undertaking is therefore considered acceptable and the companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance is based.

(105) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation.

(106) The above undertaking is accepted by Commission Decision 2005/704/EC [1].

4. **Collection of provisional duties**

(107) In view of the magnitude of the dumping margins found and in the light of the level of the material injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by Regulation (EC) No 552/2005, should be collected at the rate of the duty definitely imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the People's Republic of China, 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).

[1] See page 27 of the present Official Journal.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community frontier price, before duty, of the products described in paragraph 1, shall be as follows:

Manufacturer	Anti-dumping duty	TARIC additional code
Liaoning Mayerton Refractories Co. Ltd, Jinqiao Development Zone, Dashiqiao, Liaoning Province, 115100, PRC	2,7 %	A632
Yingkou Sanhua Refractory Material Co. Ltd, Gangdu Management Zone, Dashiqiao City, Liaoning Province, 115100, PRC	8,1 %	A633
Yingkou Kyushu Refractories Co. Ltd, Houlashan, Jinqiao Village, Dashiqiao City, Liaoning Province 115100, PRC	18,6 %	A634
Yingkou Guangyang Refractories Co. Ltd, Houlashan, Jinqiao Village, Dashiqiao City, Liaoning Province, 115100, PRC	18,6 %	A635
Yingkou Qinghua Refractories Co. Ltd, Qinghuayu Village, Qinghua District, Dashiqiao City, Liaoning Province, 115100, PRC	15,3 %	A636
Dashiqiao Sanqiang Refractory Materials Co. Ltd, Biangan Village, Nanlou Economic Development zone, Dashiqiao City, Liaoning Province, 115100, PRC	27,7 %	A638
All other companies	39,9 %	A999

3. Notwithstanding the provisions in paragraph 2, the definitive duty shall not apply to imports declared for release into free circulation in accordance with the provisions of Article 2.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Decision 2005/704/EC, establishing the Community Customs Code as from time to time amended, shall be exempt from the anti-dumping duties imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community; and

— such imports are accompanied by a valid undertaking invoice. An undertaking invoice is a commercial invoice containing at least the elements and the declaration stipulated in the Annex; and

— the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation whenever it is established, in respect of goods described in Article 1 and exempted from anti-dumping duty under the conditions listed in paragraph 1, that one or more of such conditions are not fulfilled. The second condition set out in paragraph 1 shall be considered as not being fulfilled where the undertaking invoice is found not to comply with the provisions of the Annex or found not to be authentic or where the Commission has withdrawn the acceptance of the undertaking pursuant to Article 8(9) of Regulation (EC) No 384/96 in a Regulation or Decision which refers to a particular transaction and declares the relevant undertaking invoice(s) as invalid.

3. Importers shall accept as a normal trade risk that the non-fulfilment, by any party, of one or more of the conditions listed in paragraph 1 and further defined in paragraph 2 may give rise to a customs debt incurred under Article 201 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1]. The customs debt incurred shall be recovered upon withdrawal by the Commission of the acceptance of the undertaking.

Article 3

Amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 552/2005 on imports of chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the People's Republic of China, 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) shall be definitely collected in accordance with the rules set out below. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

[1] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 13).

Article 4

This Regulation shall enter into force on the day following that of 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 Luxembourg, 6 October 2005.

For the Council
The President
A. DARLING

ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales to the Community of chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, which are subject to an Undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.

2. The name of the company mentioned in Article 1 of the Decision 2005/704/EC, accepting the undertaking, issuing the commercial invoice.

3. The commercial invoice number.

4. The date of issue of the commercial invoice.

5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.

6. The exact description of the goods, including:

   — product code number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN 1, PCN 2, etc.),

   — plain language description of the goods corresponding to the PCN concerned,

   — company product code (CPC) (if applicable),

   — CN code,

   — quantity (to be given in tonnes).

7. The description of the terms of the sale, including:

   — price per tonne,

   — the applicable payment terms,

   — the applicable delivery terms,

   — total discounts and rebates.

8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.

9. The name of the official of the company that has issued the invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2005/704/EC, I declare that the information provided in this invoice is complete and correct.'