

## COMMISSION REGULATION (EC) No 1002/98

of 13 May 1998

## imposing a provisional anti-dumping duty on imports of unwrought unalloyed magnesium originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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<sup>(1)</sup>, as last amended by Regulation (EC) No 905/98<sup>(2)</sup>, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

## A. PROCEDURE

- (1) A complaint concerning imports of unwrought unalloyed magnesium originating in the People's Republic of China was lodged on 7 July 1997 by the Comité de Liaison des Industries de Ferro-Alliages (Euro Alliages) on behalf of the sole known Community producer of that product, Pechiney Electrometallurgie, France (PEM). The complaint contained evidence of dumping of the product concerned originating in the People's Republic of China and of material injury resulting therefrom.
- (2) Having decided, after consultation, that there was sufficient evidence to justify the initiation of a proceeding, the Commission announced the opening of an investigation by notice published in the *Official Journal of the European Communities*<sup>(3)</sup> (hereinafter referred to as 'notice of initiation').
- (3) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting country and the complainant of the initiation of an investigation and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.
- (4) The Commission sent questionnaires to the parties known to be concerned and to those who identified

themselves within the time period stipulated in the notice of initiation. Replies to these questionnaires were received from the sole Community producer, 10 Chinese exporters, three unrelated importers in the Community and an unrelated trader located in Switzerland. In addition, six users and an association of users in the Community replied to the Commission's questionnaire and provided information which was sufficiently complete so that it could be used for the assessment of Community interest.

- (5) The Commission then sought and verified all information it deemed necessary for the purpose of a preliminary determination and carried out investigation visits at the premises of the following companies:

— *Community producer:*

— Pechiney Electrometallurgie, France.

— *Analogue country producer:*

— Norsk Hydro ASA, Hydro Magnesium Norge, Porsgrunn, Norway,  
and the sales coordination company,

— Hydro Magnesium Marketing SA, Belgium.

— *Importers in the Community:*

— Ayrton and Partners Ltd, United Kingdom,

— EHC Egger Consulting and Handelsgesellschaft GmbH, Germany,

— NV Specialty Metals SA, Belgium.

Although the Commission did not carry out an investigation visit at the premises of the trader, Ferrolegeringar AG, Switzerland, information included in its response was used (in conjunction with the responses from the three Community based importers) because it was considered reliable.

- (6) The investigation of dumping covered the period 1 July 1996 to 30 June 1997 (hereinafter referred to as the 'investigation period'). The examination of injury covered the period from 1993 up to the end of the investigation period.
- (7) The present proceeding follows an earlier anti-dumping proceeding concerning the same product originating in Russia, the Ukraine and Kazakhstan which resulted in anti-dumping measures consist-

<sup>(1)</sup> OJ L 56, 6. 3. 1996, p. 1.

<sup>(2)</sup> OJ L 128, 30. 4. 1998, p. 18.

<sup>(3)</sup> OJ C 256, 21. 8. 1997, p. 3.

ing of a variable anti-dumping duty for imports from Russia and the Ukraine with the exception of certain cooperating companies in these countries from which undertakings were accepted. With regard to imports from Kazakhstan<sup>(1)</sup> the proceeding was terminated, without the adoption of protective measures.

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

(8) The product covered by the complaint is unwrought unalloyed magnesium. Unwrought magnesium is available as either pure, i.e. unalloyed, magnesium containing minor quantities of impurities or as alloyed magnesium with alloying elements such as aluminium and zinc added. The present proceeding concerns only unwrought unalloyed magnesium.

(9) The two main types of production processes used in the production of magnesium are the thermic processes and the electrolytic processes.

In both of these processes, a variety of raw materials can be used due to the natural occurrence of magnesium in several different compounds, e.g. dolomite, carnalite, sea water.

(10) Unwrought unalloyed magnesium is generally sold in ingots. The weight of these ingots can vary from a few hundred grams to hundreds of kilograms. The main uses of unwrought unalloyed magnesium are as follows:

- as an alloying element in the production of aluminium alloys,
- desulphurisation of steel,
- iron nodularisation,
- chemical applications, e.g. titanium production,
- others, e.g. anode production, pharmaceutical and military applications.

(11) Unwrought unalloyed magnesium in all forms, from different production processes, has only minor differences with regard to the proportion of impurities and physical appearance, it is to a great extent interchangeable in terms of end uses and thus different types of unwrought unalloyed magnesium compete with each other.

Therefore, it was concluded that all types of unwrought unalloyed magnesium form one single product for the purpose of this proceeding.

### 2. Like product

(12) In the course of the investigation, it was established that unwrought unalloyed magnesium originating in the People's Republic of China and sold for export to the European Community, as well as unwrought unalloyed magnesium manufactured and sold by the Community producer in the Community market and unwrought unalloyed magnesium manufactured and sold in the analogue country, Norway, are alike within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation'), as the basic physical and technical characteristics and uses in all these cases are the same or closely resembling.

(13) The product under consideration is currently classifiable within CN codes 8104 11 00 and ex 8104 19 00. While CN code 8104 11 00 covers unwrought unalloyed magnesium containing at least 99,8 % by weight of magnesium, CN code 8104 19 00 covers other unwrought unalloyed magnesium as well as unwrought unalloyed magnesium.

The Chinese exporters have argued that since an insignificant proportion of unwrought unalloyed magnesium (hereinafter also referred to as 'magnesium') is imported under CN code 8104 19 00, this code should be excluded from the scope of the investigation. While it appears that none of the imports from the People's Republic of China, by cooperating exporters, were made under this CN code (and none of the Norwegian domestic sales would have fallen into this code), to exclude it may encourage circumvention of any measures through an increase in the exports to the Community of the product concerned entering under this code and therefore, the Commission does not consider appropriate such exclusion.

## C. DUMPING

### 1. Analogue country

(a) *Analogue country*

(14) Since the People's Republic of China is considered to be non-market economy country, normal value has to be determined by reference to a market economy analogue country, in accordance with Article 2(7) of the basic Regulation.

<sup>(1)</sup> Council Regulation (EC) No 1347/96 (OJ L 174, 12. 7. 1996, p. 1); Commission Decision 96/422/EC (OJ L 174, 12. 7. 1996, p. 32).

As analogue country, the complainant had suggested Norway claiming that this country was an appropriate selection. Norway was also used as an analogue country in the previous proceeding concerning imports of the same product originating in Russia, the Ukraine and Kazakhstan.

The cooperating Chinese exporters filed comments concerning the choice of Norway as an analogue country. Although they did not propose any alternative market economy third country, nor did any other interested party, they argued that Norwegian domestic sales prices could not be compared in a fair manner to Chinese export prices, as the level of development of the Norwegian economy was considerably higher than that of the People's Republic of China and the sole producer in Norway was the largest in the world, whereas the Chinese producers were mostly small companies.

In respect of this argument, the fact that the largest producer in the world of the product concerned operates in a modern, efficient and cost conscious environment, as has been found to be the case, is considered to be much more relevant for establishing normal value in this investigation than the overall comparative level of development of the Norwegian economy. It follows that the selection of Norway as the analogue country does not appear to be unreasonable in this region.

- (15) The Chinese exporters further argued that the method of production used by the Norwegian producer, i.e. the electrolytic method, was different to the thermic method used predominantly by the Chinese producers, i.e. the Pidgeon method, and therefore, it would not be possible to make a fair comparison for the purposes of calculating the dumping margin.

With regard to the different technology, the Norwegian producer operates in a highly cost efficient environment, which is the result of continuous research and investment. This led to the conclusion that it is unlikely that the production method used by the Chinese producers is more efficient than that employed by the Norwegian producer, and that, accordingly, costs and prices in Norway would be inflated by the production process used by the Norwegian producer. For this reason it was provisionally concluded that the Chinese producers did not enjoy any comparative advantage as compared to the Norwegian producer with respect of the production technology used and therefore, no allowance was granted in this regard.

- (16) In its decision to select Norway as an analogue country, the Commission also considered the following:
- the like product is produced and sold on the Norwegian domestic market in representative

quantities as compared with the volume of Chinese exports of the product concerned to the Community,

- there are significant imports of unwrought magnesium from third countries into Norway with the consequence that there is a competitive environment in this market,
- there are no trade restrictions concerning imports of the product concerned into Norway, which could distort the competitive environment,
- the Norwegian producer has a highly efficient production process and has continuously invested in this process over the years,
- the Norwegian producer has very good access to the principal raw materials (dolomite and sea water) used in the production process. The production plant is located on the sea which allows unlimited access to sea water and facilitates reception of raw materials and distribution of finished products. Dolomite is also sourced in Norway,
- there is a significant supply of local low cost electricity.

In view of all the considerations outlined above, the Commission considered it appropriate to take Norway as the analogue country for the determination of normal value in respect of imports of magnesium from the People's Republic of China.

(b) *Determination of normal value*

- (17) The Commission ascertained that the different purities and sizes of ingots of the product concerned could be used interchangeably for the same end uses. The interchangeability was also confirmed by an overlap in prices. Under these circumstances, a single normal value was established for all categories, i.e. purities and sizes.
- (18) Sales of the like product by the Norwegian producer during the investigation period were made in sufficient quantities since they accounted for substantially more than 5 % of the quantities of the product concerned originating in the People's Republic of China sold for export to the Community.
- (19) The Commission further examined whether the domestic sales of the like product could be considered as being made in the ordinary course of trade by reason of price, i.e. as not being made at a loss.

For this purpose the full unit costs of domestic sales during the investigation period, was compared to the price of each domestic sales transaction made during that period. It was found that more than 80 % of the volume of the domestic sales had been made at a profit.

As a result, normal value was established as the weighted average domestic sales price for all transactions to independent customers, as established for the sole Norwegian producer, Hydro Magnesium Norge.

## 2. Export price

- (20) Eight out of the 10 Chinese exporters which replied to the Commission's questionnaire had export sales in the Community to independent customers only. For them, the export prices were established on the basis of the prices actually paid or payable for the product when sold for export from the People's Republic of China to the Community, in accordance with Article 2(8) of the basic Regulation.
- (21) The two other Chinese exporters sold to related selling companies in the Community and submitted questionnaire responses which omitted the necessary information requested with regard to sales of the product concerned by their related companies to unrelated customers in the Community market. One of these two exporters made no export sales directly to unrelated customers in the Community while the other sold to both related and unrelated customers in the Community.

In the case of the latter exporter, it was decided that the prices reported in the questionnaire reply, concerning sales to unrelated customers in the Community, would be taken into account. However, with regard to sales made by the two exporters to the Community via their related selling companies, the export price was calculated on the same basis as was applied for all other non-cooperating companies, as described below, i.e. on the basis of the facts available in accordance with Article 18 of the basic Regulation.

- (22) The detailed information concerning sales volume to unrelated customers in the Community received from the Chinese exporters which replied to the Commission's questionnaires accounted for about 60 % of the total import volume into the Com-

munity from the People's Republic of China, as recorded in Eurostat for the product concerned during the investigation period. The export price for the remaining import volume from non-cooperating exporters had to be established on the basis of the facts available, in accordance with Article 18 of the basic Regulation. Since the level of non-cooperation was significant and in order to avoid parties benefiting from their non-cooperation, the Commission considered it appropriate to establish that the lowest weighted average export price found for a cooperating Chinese exporter with a representative export volume was the export price applicable to the remaining sales volume from non-cooperating exporters.

## 3. Comparison

- (23) The Commission compared the normal value and the export prices on a fob Chinese/Norwegian frontier basis and at the same level of trade.

For the purpose of ensuring a fair comparison between normal value and export prices, adjustments were made wherever appropriate to account for differences affecting price comparability. Thus, adjustments were made with regard to transport, insurance, handling, loading and ancillary costs, credit costs and level of trade in accordance with Article 2(10) of the basic Regulation.

- (24) The Chinese exporters have claimed allowances for physical differences and quality differences between the Chinese magnesium and Norwegian magnesium. They have alleged that the quality of the Chinese product is unreliable, (i.e. it is more susceptible to oxidation, possibly as a result of exposure to water during the sea voyage) and that consequently, the Chinese product suffers from an inferior user perception. However, they have not provided any evidence which would have allowed quantification of their claimed differences and no adjustment was, therefore, granted at this provisional stage.

## 4. Dumping margin

- (25) The comparison of the weighted average normal value with the weighted average export price as established above revealed the existence of dumping, the dumping margin being equal to the amount by which normal value exceeds the export

price. The single weighted average dumping margin for all Chinese exporters, expressed as a percentage of the cif export price free at Community frontier amounted to 40,6 %.

## D. INJURY

### 1. Introduction

- (26) The information supplied below on the Community industry has been indexed for reasons of confidentiality, as it relates to a single Community producer.
- (27) The Commission has examined the period 1993 until the investigation period but has concentrated on the period from 1995 to the end of the investigation period in the analysis of injury, as imports of magnesium from the People's Republic of China were less than 1 % of Community consumption in terms of volume in 1993 and 1994.
- (28) Eurostat was used as the source of the import data used in the injury analysis (together with export data submitted by the exporters) whereas Community industry data was obtained from the verified questionnaire response.

### 2. The Community market

#### (a) Consumption

- (29) The total consumption in the Community was established on the basis of the total imports of the product concerned into the Community (Eurostat import statistics), plus the total verified sales made by the Community industry on the Community market.

With 1993 as 100, consumption in the Community developed, in volume terms, to 162 in 1994, 166 in 1995, 150 in 1996 and 173 in the investigation period, i.e. an increase of 73 % over the whole period examined.

#### (b) Factors relating to the dumped imports

##### (i) Volume of the dumped imports

- (30) During the period under examination, i.e. from 1993 to the investigation period, the volume of Chinese exports increased substantially.

In 1993 Chinese exports into the Community amounted to 205 tonnes. Between 1995 and 1996, they increased over 300 %, and between 1996 and the investigation period there was a further advance

of over 170 % thus reaching a volume of 15 534 tonnes.

##### (ii) Market share of the dumped imports

- (31) Market share of imports from the People's Republic of China (in volume) rose throughout the period from 0,5 % in 1993 and 1994 to 4,2 % in 1995 and 22,8 % during the investigation period. This development resulted in the People's Republic of China becoming the second largest supplier in the Community market.

##### (iii) Prices of the dumped imports

- (32) From 1993 to 1995 import prices rose by 24 % mainly as a consequence of overall increasing demand in that period. However, between 1995 and the investigation period, (i.e. when import volumes from the People's Republic of China were increasing significantly) import prices fell substantially, i.e. by 31,5 %, to levels below those prevailing in 1993.

##### (c) Price undercutting of the dumped imports

- (33) A comparison of sales prices of the Community industry with those of the Chinese exporters on the Community market for the investigation period showed a weighted average price undercutting margin of 45,5 %. This comparison was made at the same level of trade. Since the Chinese exporters sold to traders, who in turn resold to end-users, whereas the Community industry sold directly to end-users, the Community industry's sales prices were adjusted downwards, deducting transport and certain sales expenses, thus resulting in a price comparable to the cif import prices.

### 3. Situation of the Community industry

#### (a) Introduction

- (34) It should be borne in mind that in the previous anti-dumping proceeding concerning imports of the same product originating in Russia, the Ukraine and Kazakhstan, it was determined that the Community industry suffered material injury as a result of the dumped imports from two of these countries.

It should also be noted that, in general, prices of magnesium on the Community market rose in 1995, due to increasing demand. This led to the brief improvement in the performance of the Community industry in that year, as evidenced by the rise in the industry's sales volumes and prices between 1994 and 1995. This improvement was

followed by the deterioration described below, despite the introduction in 1995 of anti-dumping measures on imports of magnesium originating in Russia and the Ukraine.

(b) *Production, production capacity and capacity utilisation*

- (35) Production over the period 1995 to the investigation period decreased by 5 % whereas production capacity was static. The capacity utilisation rate of the Community industry decreased therefore from 85 % to 81 % during this period.

(c) *Sales volume, value and prices*

- (36) The sales made by the Community industry on the Community market during the period 1995 to the investigation period decreased in volume by 28 %, and in value by 36 %.

The average sales price of magnesium sold by the Community industry on the Community market between 1995 and the investigation period decreased by 11 %.

(d) *Market share*

- (37) The Community industry's share of the Community market in terms of volume decreased from 15,5 % in 1995 to 10,7 %, i.e. by 31 %, in the investigation period. The corresponding value figures were 18,4 % and 12,7 % respectively.

(e) *Profitability*

- (38) After losses in 1993 and 1994, profitability defined as the return on turnover became positive again in 1995 due to an increase in demand on the EU market. However, profitability declined substantially between 1995 and the investigation period (on an index base 1995 = 100, 1996 = 110 and the investigation period = 35). This decline was mainly due to the substantial decreases in both sales volumes and values described at recital 36.

(f) *Employment*

- (39) Between 1995 and the investigation period employment in the Community industry decreased by 9 %. Since the product concerned constitutes the majority of the production of the sole magnesium plant of the Community producer, the viability of the whole plant would be jeopardised if injury is not removed.

#### 4. Conclusion on injury

- (40) The above findings show that, between 1995 and the investigation period, the Community industry

suffered material injury consisting of a reduction in sales volume and value, market share, profitability and employment levels.

#### E. CAUSATION OF INJURY

- (41) The Commission examined whether the injury suffered by the Community industry was caused by the dumped imports from the People's Republic of China, and whether other factors had caused injury or contributed to it in order to ensure that injury caused by other factors was not attributed to the dumped imports concerned.

In this context, it has already been found in the previous anti-dumping proceeding relating to magnesium originating, *inter alia*, in Russia and the Ukraine, that the Community market for the product concerned is price sensitive and transparent, with the consequence that the mere availability of low priced imports has an immediate impact on the situation of the Community market overall. No information has been obtained in the course of the present proceeding which would contradict this finding.

##### 1. Effect of the dumped imports

- (42) After anti-dumping measures were imposed on imports of magnesium from Russia and the Ukraine (i.e. from 20 December 1995) imports from these two countries have fallen from 17 700 tonnes in 1995 to 8 969 tonnes in the investigation period (a reduction of 8 731 tonnes or 49 %). The reduction in imports volumes from Russia and the Ukraine has however been more than counter-balanced by imports from the People's Republic of China, which have risen over the same period from 2 753 tonnes to 15 534 tonnes — an increase of 12 781 tonnes or 464 %. These imports were made at much lower prices than the average price prevailing on the Community market, and undercut the Community industry's prices significantly, at a time when the Community industry could have expected to benefit from the effects of anti-dumping measures and an expanding market. It is evident that in these circumstances price suppression took place.

Indeed, the cif Community frontier prices of Chinese imports decreased by 31,5 % between 1995 and the investigation period. At this time, the Chinese prices were the lowest prices of all significant sellers on the Community magnesium market, and were 17 % below the average import prices and 19 % lower than the average of all prices on the Community market.

- (43) It is apparent that the deteriorating situation of the Community industry coincided with the growth of volume of Chinese imports made at dumped prices. After a brief recovery in 1995, the situation of the Community industry deteriorated considerably up to the investigation period; dumped imports from the People's Republic of China grew at volumes that can only be characterised as remarkable between 1995 and the end of the investigation period.

## 2. Imports from other countries

- (44) Imports into the Community originating, *inter alia*, in Norway, the USA and Canada were examined to assess whether, and to what extent, they had caused injury to the Community industry.

### (a) Norway

- (45) As market leader in the Community market throughout the period examined, imports from Norway have had a strong influence on the market. The Norwegian producer increased export volumes, market share and share of total imports into the Community between 1995 and the investigation period, when Norway's share of the Community market was 31,3 %. However, between 1995 and the investigation period, the prices of exports from Norway have remained significantly above the average import and market prices in the Community.

### (b) USA and Canada

- (46) From 1995 to the investigation period, import volumes from these two countries taken together decreased from 12 533 to 9 932 tonnes. In the same period, prices of imports from the USA rose by 7 %, while the prices of imports from Canada were the highest of all countries exporting to the Community, being 22 % higher than the average import price.

### (c) Russia and the Ukraine

- (47) After the imposition of anti-dumping measures on Russian and Ukrainian magnesium imports, the volume of imports from these countries fell by 49 % and their value by 55 %. Their joint market share by volume also fell from 27,2 % in 1995 to 13,2 % in the investigation period. The weighted average price of imports from these countries in the investigation period was 14,5 % above that of imports of the product concerned from the People's Republic of China.

## 3. Conclusion on causation

- (48) Given the fact that magnesium is a homogeneous commodity-type product, sold in a highly transparent and price sensitive market, the Commission considers that imported magnesium originating in the People's Republic of China has had a significant negative impact on the Community market, and hence on the situation of the sole Community producer.

The Community industry could not benefit from the effect of anti-dumping measures imposed on imports from Russia and the Ukraine, as these were more than outweighed by an increase in imports from the People's Republic of China at dumped prices. Indeed, between 1995 and the investigation period, the volume of imports from the People's Republic of China rose by 464 % while those from Russia and the Ukraine halved. Furthermore, compared to the increase in imports from the People's Republic of China, the increase in imports from Norway is modest and cannot have broken the causal link between the imports subject to the investigation and the material injury suffered by the Community industry.

Consequently, the Commission is of the opinion that the dumped imports from the People's Republic of China have, when taken in isolation, caused material injury to the Community industry. The fact that the pricing behaviour of Chinese exporters to the Community is in sharp contrast to that of the other market participants points to the conclusion that dumped imports from the People's Republic of China have indeed caused material injury.

## F. COMMUNITY INTEREST

### 1. The Community interest investigation

- (49) In accordance with Article 21 of the basic Regulation, and in order to evaluate whether the imposition of anti-dumping measures would be against the interest of the Community as a whole, the Commission examined the impact of imposition or non-imposition of measures on the various interests involved. As already mentioned at recital 4, the Commission sent questionnaires to known or potential industrial users of the product concerned, as follows:

— 11 questionnaires to associations of industries operating in the sectors of major use of the product concerned in the Community,

- 75 questionnaires to individual companies (in the sectors of aluminium, steel, chemistry, magnesium alloys and other magnesium processing).

Questionnaire responses were received within the time limits set from:

- two companies processing magnesium into granules, powders and alloys (Magnesium Elektron, a division of British Aluminium Ltd, United Kingdom and Pometon SpA, Italy),
- one association of German steel producers (Wirtschaftsvereinigung Stahl),
- five companies in the steel manufacturing sector, all members of the abovementioned association (Hüttenwerke Krupp Mannesmann GmbH, Preussag Stahl AG, Saarstahl AG, Thyssen Krupp Stahl GmbH, AG der Dillinger Hüttenwerke).

## 2. The Community industry

- (50) As mentioned above, anti-dumping measures were imposed in 1996 on imports of magnesium originating in Russia and the Ukraine. The dumped imports from the People's Republic of China subject to the present proceeding have caused new injury to the Community industry, and prevented it from recovering from the effects of previous dumping.

Failure to address this continued injury would bring into question the viability of the sole Community producer, especially bearing in mind the trends in Chinese exports to the Community between 1995 and mid-1997 (sharply increasing volumes, decreasing prices), the wide range of different sources of supply of the product (see recitals 44 to 47), and the trade-diverting effects of the anti-dumping duty (108 %) imposed in 1995 on Chinese imports of this product into the USA.

## 3. Traders/Importers

- (51) Cooperating traders/importers represent 11 % (by volume) of the imports into the Community of the product concerned during the investigation period.

Except for one company, for which the product concerned represents the almost exclusive activity, traders appear to deal in a wide range of different metals. For the other three companies, the turnover

on the Community market of the product subject to investigation, expressed as a percentage of their total sales, ranges between 2 and 16 %. Their estimation of total staff numbers directly occupied by the product concerned amounts to less than 10 for the cooperating companies.

All traders/importers are against protective measures, arguing that the Community industry has insufficient capacity to meet demand, and that the negative effect for users of any price increase following the introduction of measures would outweigh the benefit for the Community industry. This contention has been examined.

As far as the balance between supply and demand is concerned, it should be recalled that anti-dumping measures are intended to remove only the trade distortion caused by dumping. Indeed, the history of this product has shown that total imports actually increased substantially, notwithstanding the imposition of protective measures in 1995. The market share of imports increased from 78,4 % in 1995 to 83,5 % in the investigation period. In view of the numerous sources of supply of the product concerned, a possible market shortage, if measures are adopted, is therefore unlikely.

## 4. Interest of the users

- (52) The users are:

- the aluminium founders (*circa* 50 % of the 1996 consumption on the Community market), and
- the manufacturers of magnesium-based alloys, magnesium turnings, granules and powders (*circa* 50 % of the market),
- steel manufacturers.

### (a) Aluminium founders

- (53) No aluminium manufacturer (or association thereof) made itself known or replied to questionnaires sent in the course of this investigation.

On the basis of information available to the Commission, the content of magnesium used to produce aluminium varies between 3 and 5 % of total raw material input. The impact of any anti-dumping duty on manufacturing costs can therefore be deemed as marginal. This would also explain the lack of cooperation from users in this sector.



(b) *Magnesium alloys, turnings, granules and powder manufacturers*

- (54) The two companies mentioned above that have cooperated represent less than 10 % of the Community consumption of the product concerned, with varying volumes of magnesium of Chinese origin. Total staff employed in production using the product concerned amounts to *circa* 300 people, the vast majority of whom are in alloys. However, labour intensiveness varies considerably according to the products manufactured, i.e. either magnesium-based alloys (which are used in the automotive, pharmaceutical and nuclear industries), or granules (used in chemical industries and by the steel industry as a desulphurising agent). Value added and labour intensiveness are far greater for alloys (particularly certain types) than for granules. The impact of measures, therefore, will be less for alloy manufacturers, which represent the overwhelming majority of staff employed.

Both companies oppose protective measures, alleging that the share of the product concerned represents more than 50 %, in terms of raw materials employed, of their manufacturing costs. They point out that any increase in the price of magnesium would lead the steel industry to source the components for its desulphurising blends from suppliers located outside the Community (they would continue enjoying the possibility to source magnesium from the People's Republic of China at dumped prices), or encourage the Chinese industry to produce and export the granules themselves.

These allegations, however, have not been substantiated. It should also be noted that profitability figures (provided by only one of the cooperating companies) indicated levels suggesting that a large margin for the absorption of any duty-induced cost increases exists, and that their operations would not be seriously affected if measures were imposed.

(c) *Steel manufacturers*

- (55) Steel manufacturers purchase magnesium granules which are mostly used in mixtures for desulphurisation purposes. As a consequence of this, no figure was provided on the share of the product concerned in their own cost structures.

Steel producers oppose measures, claiming that any increase in the cost of the raw material used by their suppliers will eventually be passed on to

them. However, no evidence was produced in this regard. In view of the proportion of their total costs likely to be represented by magnesium granules, the Commission concludes that anti-dumping measures can be expected to have little impact.

## 5. Conclusion on Community interest

- (56) Any price increase resulting from anti-dumping measures has the potential to increase the costs of user industries. The existence of a wide range of different sources of supply of magnesium, however, means that competition will remain intense on the Community market: not taking anti-dumping measures could entail the disappearance of the sole Community producer, thus lessen the degree of competition and prices would be likely to rise.

On the basis of the above Community interest analysis, the Commission has provisionally concluded that there are no compelling reasons not to adopt measures.

## G. PROVISIONAL DUTY

### 1. Injury elimination level

- (57) In order to prevent further injury being caused by the dumped imports, the Commission considers it necessary to adopt provisional anti-dumping measures.

For the purpose of determining the level and form of these measures, the Commission took account of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

To that effect, the Commission considered that the prices of the dumped imports should be increased to a non-injurious level. The necessary price increase was determined on the basis of a comparison of the weighted average import price used to establish price undercutting, as outlined at recital 33, with the production costs of the sole Community producer and a profit margin of 5 %. This profit margin was considered necessary to ensure the viability of the industry.

The comparison (on a weighted average basis, and expressed as a percentage of cif level) shows an injury margin of 46,9 %. This margin is above the dumping margin established.

The provisional duty should therefore be set at the level of the dumping margin established, i.e. at 40,6 %.

## 2. Form of the duties

- (58) In order to be consistent with the measures adopted in the previous proceeding concerning the same product, and given the material injury suffered by the Community industry and the nature of the product, a variable duty is considered the most appropriate in this case. Thus, no extra burden is imposed on exporters which will increase export prices to or beyond the duty level.

In these circumstances, it is proposed that a variable duty based on a minimum price of ECU 2 797 per tonne, on a cif Community border level for imports of unwrought unalloyed magnesium originating in the People's Republic of China, should be adopted.

## H. FINAL PROVISION

- (59) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purposes of this Regulation are provisional, and may have to be reconsidered for the purposes of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

### *Article 1*

1. (a) A provisional anti-dumping duty is hereby imposed on imports of unwrought pure magnesium falling within CN codes 8104 11 00 and ex 8104 19 00 (TARIC code 8104 19 00\*10) originating in the People's Republic of China.

For the purpose of this Regulation unwrought pure magnesium shall be defined as unwrought magnesium unintentionally containing small amounts of other elements as impurities.

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

Done at Brussels, 13 May 1998.

- (b) This Regulation shall not cover unwrought alloyed magnesium which is unwrought magnesium containing more than 3 % by weight of intentionally added alloying elements such as aluminium and zinc.

2. The amount of the anti-dumping duty shall be the difference between the minimum import price of ECU 2 797 per tonne and the cif Community frontier price in all cases where the cif Community frontier price per tonne is less than the minimum import price. No duty shall be collected where the cif Community frontier price per tonne is equal to, or higher than, the minimum import price.

3. The provisions in force concerning customs duties shall apply.

4. In instances where the customs value is reduced pursuant to Article 145 of Commission Regulation (EEC) No 2454/93<sup>(1)</sup>, the minimum import price, referred to in paragraph 2 above, will also be reduced, on a pro-rata basis, so that the duty payable will be the amount by which the reduced minimum import price exceeds the reduced customs value.

5. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

### *Article 2*

Without prejudice to Article 20 of Regulation (EC) No 384/96, the parties concerned may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

### *Article 3*

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

*For the Commission*

Leon BRITTAN

*Vice-President*

<sup>(1)</sup> OJ L 253, 11. 10. 1993, p. 1.