COUNCIL REGULATION (EC) No 579/2003

of 27 March 2003

terminating the anti-dumping proceeding concerning imports of unwrought unalloyed magnesium 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 Articles 9 and 11 thereof,

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

Whereas:

A. PROCEDURE

(1) In November 1998, the Council adopted Regulation (EC) No 2402/98 [2] imposing definitive anti-dumping duties on unwrought unalloyed magnesium originating in the People's Republic of China.

(2) These duties were imposed as a result of an investigation following a complaint lodged by the Comité de Liaison des Industries de Ferro-Alliages (the complainant) on behalf of the sole Community producer of unwrought unalloyed magnesium.

(3) In June 2002 a partial interim review [3] pursuant to Article 11(3) of the Basic Regulation was initiated. The review was limited in scope to the appropriateness of the definitive anti-dumping duties imposed.

B. WITHDRAWAL OF THE COMPLAINT

(4) By a letter of 18 June 2002, the complainant formally withdrew its complaint. The complainant informed the Commission that the sole known Community producer of unwrought unalloyed magnesium had ceased its production, and declared that the measures appeared no longer necessary.

(5) In accordance with Article 9(1) of the Basic Regulation, a proceeding may be terminated where the complaint is withdrawn, unless such termination would not be in the Community interest.

(6) In a notice published on 27 September 2002 [4] the Commission announced its intention of investigating whether repeal of the measures was warranted. Interested parties were invited to make themselves known and to provide the Commission with information together with supporting evidence. The Commission received seven replies from the user industry supporting repeal of the measures. Furthermore, the sole Community producer confirmed that the measures were no longer appropriate. In view of the above, the Commission informed the interested parties of its intention to propose that the Council repeal the anti-dumping duty in force and terminate the proceeding following the withdrawal of support. No further arguments were raised concerning the Community interest aspects. It is therefore considered that termination of the proceeding would not be against the Community interest.

(7) Certain parties requested the retroactive repeal of the measures arguing that there had been no basis for the imposition of the anti-dumping duties since the complainant formally withdrew its complaint.

(8) In this respect, it should be noted that the results of a review under Article 11 of the Basic Regulation normally apply from the date of conclusion of such review. Indeed, it is established Community practice that anti-dumping duties remain in force as long as it is found that their termination or modification is warranted. Consequently, parties had no reason legitimately to expect that in the present case the existing measures would be repealed with retroactive effect. It was considered that a consistent legal approach should be adopted in order to avoid an unstable and unforeseeable environment for economic operators in future. Additionally, termination of the anti-dumping measure with retroactive effect would affect the unalloyed magnesium market in a discriminatory way. Those economic operators who purchased unwrought unalloyed magnesium from countries not subject to the anti-dumping duties would in the event of retroactivity find that their prudence was not warranted. It was considered that operators who purchased in China would make a windfall profit, as anti-dumping duties would not be levied on imports made between cessation, by the Community industry, of production of unwrought unalloyed magnesium and the publication of this Regulation. For all the abovementioned reasons, the request for retroactive termination had to be rejected.

(9) Given the above, it is concluded that the anti-dumping proceeding concerning unwrought unalloyed magnesium originating in the People's Republic of China should be terminated.

C. INTERIM REVIEW

(10) Given the above, the ongoing interim review investigation concerning the same anti-dumping measures should also be terminated.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 298, 7.11.1998, p. 1. Regulation as last amended by Regulation (EC) No 2788/2000 (OJ L 324, 21.12.2000, p. 4).
[3] OJ C 140, 13.6.2002, p. 14.
[4] OJ C 230, 27.9.2002, p. 2.