COUNCIL REGULATION (EC) No 154/2003

of 27 January 2003

amending the anti-dumping measures imposed by Regulation (EC) No 495/98 and by Regulation (EC) No 2413/95 on imports of ferro-silico-manganese originating in the People's Republic of China and Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In March 1998, the Council, by Regulation (EC) No 495/98 [2], imposed definitive anti-dumping duties on imports of ferro-silico-manganese originating in the People's Republic of China (the PRC) and amended the measures in force against Ukraine pursuant to Council Regulation (EC) No 2413/95 [3]. The duties took the form of a specific duty.

2. Initiation

(2) On 13 June 2002, the Commission announced by a notice (Notice of Initiation) published in the *Official Journal of the European Communities* [4] the initiation of a partial interim review of the anti-dumping measures applicable to imports into the Community of ferro-silico-manganese originating in the PRC and Ukraine.

(3) The review was initiated on an initiative of the Commission in order to examine the appropriateness of the measures in force. The current measure, namely a duty in the form of a specific duty, does not cater for situations in which imported goods have been damaged before entry into free circulation.

3. Investigation

(4) The Commission officially advised exporting producers, the importers and the users known to be concerned and their associations, the representatives of the exporting countries concerned and the Community producers of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.

(5) A number of exporting producers in the countries concerned, as well as Community producers and Community importers/traders made their views known in writing. All parties who so requested within the abovementioned time limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

(6) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of the appropriateness of the measures in force.

B. RESULTS OF THE INVESTIGATION

(7) Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [5] envisages, for the determination of the customs value, an apportioning of the price actually paid or payable in situations where goods have been damaged before entry into free circulation.

(8) In order to avoid an excessive amount of anti-dumping duty being levied, the specific duty should, in case of damaged goods, be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. According to the well-established rules set out by the Community Customs Code, the customs value is reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

(9) No interested party submitted any comments or arguments against this proposal.

(10) It is therefore concluded that in the absence of any substantiated argument from interested parties, in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value, the specific duty shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable,

[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 62, 3.3.1998, p. 1.
[3] OJ L 248, 14.10.1995, p. 1.
[4] OJ C 140, 13.6.2002, p. 8.
[5] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 444/2002 (OJ L 68, 12.3.2002, p. 11).