COUNCIL REGULATION (EC) No 152/2003

of 27 January 2003

amending the anti-dumping measures imposed by Regulation (EC) No 299/2001 on imports of potassium permanganate originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In February 2001, the Council, by Regulation (EC) No 299/2001 [2], imposed definitive anti-dumping duties on imports of potassium permanganate originating in the People's Republic of China (the PRC). 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* [3] the initiation of a partial interim review of the anti-dumping measures applicable to imports into the Community of potassium permanganate originating in the PRC.

(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, i.e. 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 country concerned and the Community producers about 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 country concerned, as well as Community producers and Community importers/traders made their views known in writing. All parties who so requested within the time limit set above 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 [4] foresees, 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 that an excessive amount of anti-dumping duty is 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.

(9) Community producers argued that the term 'damaged' is vague and might be subject to wide interpretations that could lead to circumvention practices or even render the anti-dumping duties ineffective. In order to avoid circumvention, it was submitted that whenever the customs authorities consider goods to be damaged, a second, independent expert opinion should be provided on the question whether the goods are damaged.

(10) It should be noted that the valuation of goods, damaged or not, is carried out by the customs authorities according to the well-established rules set out by the Community Customs Code that do not allow wide interpretations that could render the anti-dumping duty ineffective. In view of these established rules, there is no need for specific provisions covering goods subject to anti-dumping measures. The request to introduce a mandatory second expert opinion is therefore rejected.

[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 44, 15.2.2001, p. 4.
[3] OJ C 140, 13.6.2002, p. 12.
[4] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 444/2002 (OJ L 68, 12.3.2002, p. 11).