COUNCIL REGULATION (EC) No 1171/95

of 22 May 1995

amending Regulation (EC) No 3359/93 imposing amended anti-dumping measures on imports of ferro-silicon originating in Russia, Kazakhstan, Ukraine, Iceland, Norway, Sweden, Venezuela and Brazil

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 14 thereof,

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

Whereas :

A. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 3359/93 [2], the Council imposed an anti-dumping duty of 25 % on imports of ferro-silicon falling within CN codes 7202 21 10, 7202 21 90 and ex 7202 29 00 originating in Brazil, with the exception of imports from five exporters specifically mentioned which were subject to a lesser rate of duty.

(2) In that Regulation, the Council noted that the Commission would be prepared, as always, to carry out a review in the case of those companies which did not export during the investigation period, are not related to companies which did export during that period and which now intend to start exporting to the Community (so-called newcomers).

B. REVIEW REQUEST

(3) The Commission received an application for a review of the measures currently in force from a Brazilian company, Libra Ligas do Brazil claiming that it satisfied the criteria mentioned under recital (2).

(4) This company provided, on request, evidence of the facts alleged which was considered sufficient to justify the initiation of a review in accordance with Articles 7 and 14 of Regulation (EEC) No 2423/88 (hereinafter referred to as the basic Regulation).

By a notice published on 17 June 1994 [3] the Commission, after consultation within the Advisory Committee, initiated a review of Regulation (EC) No 3359/93 with regard to the company concerned and commenced its investigation.

(5) Subsequently, another Brazilian company, named Nova Era Silicon SA, made itself known to the Commission and requested to be included in the investigation in accordance with the provisions of the abovementioned notice of initiation. Since this company was able to submit evidence that it had not exported the products concerned to the Community during the period of investigation but that it had the firm intention of doing so and was not related to or associated with any of the companies subject to the anti-dumping duty, the Commission decided to include it in the investigation.

(6) The product under investigation is the same as the one concerned in Regulation (EC) No 3359/93.

(7) The investigation period set was from 1 July 1993 to 30 June 1994.

C. RESULTS OF THE INVESTIGATION

1. Newcomer qualification

(8) The investigation confirmed that the two companies, Libra Ligas do Brazil and Nova Era Silicon SA, had never exported ferro-silicon to the Community. The Commission was satisfied that these companies intended to do so in the immediate future, as it was shown that potential customers had been contacted.

In addition it was found that these two companies had no link, either direct or indirect, with the exporters involved in the previous procedure and for which dumping was found.

Accordingly, it is confirmed that the two companies concerned should be considered as 'newcomers' and that a partial review of Regulation (EC) No 3359/93 was warranted insofar as these two companies are concerned.

2. Dumping

(9) Since the companies involved did not sell any ferro-silicon on the domestic market during the investigation period at prices which permitted recovery of all costs, normal value was determined for each company on the basis of the constructed value of the product concerned in accordance with Article 2 (3) (b) of the basic Regulation. This constructed value was computed on the basis of all costs, both fixed and variable, in the country of origin, of raw materials and manufacture, plus a reasonable amount for selling, administrative, other general expenses and reasonable profit. Selling, general and administrative expenses were calculated

[1] OJ No L 209. 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94, (OJ No L 66, 10. 3. 1994, p. 10).
[2] OJ No L 302, 9. 12. 1993, p. 1.
[3] OJ No C 165, 17. 6. 1994, p. 13.

by reference to the expenses incurred for the sales of ferro-silicon on the Brazilian domestic market. An average profit of 6 % on the costs of production, necessary for long-term investment, was found reasonable to be applied. This rate was also used in the previous investigation with regard to the other Brazilian producers and can still be regarded as the profit that Brazilian companies can normally achieve on their domestic market.

(10) Since it was established that the two companies concerned had not exported ferro-silicon to the Community during the investigation period, it was not possible to determine whether dumping existed in the absence of an export price.

(11) However, the normal value established for each company gives decisive guidance on the export price level required in order to avoid dumping in the future.

D. AMENDMENT OF THE REVIEWED MEASURES

(12) As the level of injury caused to the Community industry is higher than the dumping margin, the measures should be based on the dumping margin.

(13) Under these circumstances, the appropriate measure for the two companies concerned should take the form of a variable duty equal to the difference between the export price of a tonne of ferro-silicon net, free at Community frontier, not cleared through customs and a minimum price cif Community frontier, where the export price is lower than this minimum price. This minimum price should be established on the basis of the normal value to which is added charges for inland freight, ocean freight, insurance and commission.

(14) Libra Ligas do Brazil and Nova Era Silicon SA were informed of the essential facts and considerations on the basis of which it was intended to propose the amendment of Regulation (EC) No 3359/93 and were given an opportunity to comment. The Commission also officially advised the complainants mentioned in the initial investigation.

The Brazilian producers made their views known in writing which were taken into consideration where deemed appropriate.

(15) Accordingly, Regulation (EC) No 3359/93 should be amended to allow for the imposition of a company-specific anti-dumping duty on imports of ferro-silicon manufactured by Libra Ligas do Brazil and Nova Era Silicon SA replacing the general anti-dumping duty of 25 %.

The duty should be equal to the difference between ECU 849 per tonne for Libra Ligas do Brazil and ECU 885 for Nova Era Silicon SA and the net, free at Community frontier price, before duty, where the latter is lower.

(16) Since this review is limited to including within the scope of the measures two Brazilian producers which have not previously exported to the Community, the measures contained in Regulation (EC) No 3359/93 are not being amended or confirmed within the meaning of Article 15 (1) of the basic Regulation and consequently the date on which they are due to expire pursuant to these provisions should remain unchanged,

HAS ADOPTED THIS REGULATION :

Article 1

The following subparagraph is hereby added to Article 1 (2) of Regulation (EC) No 3359/93, following the end of the indent concerning ferro-silicon originating in Brazil :

'— for ferro-silicon produced by Libra Ligas do Brazil and Nova Era Silicon SA, the amount of the duty shall be the difference between the net, free-at-Community-frontier price, not cleared through customs, where lower and :

ECU 849 per tonne for Libra Ligas do Brazil (additional taric code 8827),

ECU 885 per tonne for Nova Era Silicon SA (additional taric code 8828).'

Article 2

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

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

Done at Brussels, 22 May 1995.

For the Council

The President

A. MADELIN