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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 351/98

of 12 February 1998

amending Regulation (EC) No 3359/93 as far as anti-dumping measures on certain imports of ferro-silicon originating in Brazil are concerned

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], 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. Previous investigations

(1) Anti-dumping measures on imports of ferro-silicon originating in Brazil have been in force since 1987 when definitive anti-dumping duties were imposed on these imports by Regulation (EEC) No 3650/87 [2], with the exception of imports from certain exporters for which either no dumping was found or undertakings had been accepted by the Commission [3].

(2) Subsequently, in May 1990 [4] and in May 1992 [5], two interim reviews of the measures covering dumping and injury were initiated at the Commissions's initiative and at the request of the Community industry respectively. As a result of the most recent of these reviews the definitive anti-dumping duty which is the subject of the present investigation was imposed in 1993 by Council Regulation (EC) No 3359/93 [6].

2. Present investigation

(3) On 4 July 1996 the Brazilian exporter Companhia Brasileira Carbureto de Calcio lodged a request for an interim review of the anti-dumping measures applicable to it limited to the aspects of dumping pursuant to Article 11(3) of Council Regulation (EC) No 384/96 (hereinafter referred to as the Basic Regulation). The request alleged that the continued imposition of the anti-dumping duties on its exports to the Community was no longer necessary to offset dumping since its export prices were substantially higher than those established in the investigation leading to the existing measures.

Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission published a notice of initiation [7] and commenced an investigation.

(4) Following the initiation of the review, the Commission received on 7 October 1996 a request from another exporter in Brazil, Cia. de Ferro Ligas da Bahia (Ferbasa), for its inclusion in the scope of the interim review. That company alleged that the continued imposition of the anti-dumping measures was no longer necessary to offset dumping since its present export prices had increased to a level far higher than its normal value during the period between June 1995 to June 1996.

Based on the evidence provided by that company, the Commission decided, after consulting the Advisory Committee, to accept its request and to include it in the scope of the interim review.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 343, 5. 12. 1987, p. 1.
[3] OJ L 219, 8. 8. 1987, p. 24.
[4] OJ C 109, 3. 5. 1990, p. 5.
[5] OJ C 115, 6. 5. 1992, p. 2.
[6] OJ L 302, 9. 12. 1993, p. 1. Regulation as last amended by Regulation (EC) No 1171/95 (OJ L 118, 25. 5. 1995, p. 7).
[7] OJ C 285, 28. 9. 1996, p. 15.

(5) The Commission officially advised the representatives of the exporting country of the initiation of the interim review and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) The Commission sent questionnaires and received detailed information from the two Brazilian exporters concerned.

(7) The Commission sought and verified all information it deemed necessary for the purpose of a determination of dumping and carried out investigations at the premises of the two following Brazilian exporters:

Cia. Brasileira Carbureto de Cálcio, Santos Dumont (Minas Gerais),

Cia. de Ferro Ligas da Bahia (Ferbasa), Pojuca (Bahia).

(8) The investigation of dumping covered the period from 1 September 1995 to 31 August 1996 ('the investigation period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product description

(9) The product under consideration is the same as in the Regulation subject to review, i.e. ferro-silicon containing between 20 % and 96 % of silicon by weight. The product is used as a deoxidiser in steel manufacture and as an alloying component for high temperature steel alloys and sheet metal.

2. Like product

(10) It was established that the ferro-silicon sold on the Brazilian market and the ferro-silicon exported from Brazil to the Community by the two companies concerned was identical or closely resembling in terms of physical characteristics and end uses. Therefore, all these products were considered a like product in accordance with Article 1(4) of the Basic Regulation.

C. NORMAL VALUE AND EXPORT PRICE

(11) In accordance with Article 2(2) of the Basic Regulation, normal value was established on the basis of sales prices of ferro-silicon on the Brazilian domestic market since the domestic sales by each of the two Brazilian exporters concerned exceeded 5 % of their respective export sales to the Community. For one exporter all its domestic sales were used in the calculation of normal value since all these sales were found to be profitable. For the other exporter only the profitable sales were used in establishing normal value since the number of domestic sales below unit product costs constituted more than 20 % of the total domestic sales, in accordance with Article 2(4) of the Basic Regulation. The profitable sales of this second exporter represented more than 10 % of its total domestic sales.

(12) Export price was established by reference to the prices actually paid for the ferro-silicon sold for export to independent buyers in the Community, in accordance with Article 2(8) of the Basic Regulation.

D. COMPARISON

(13) The weighted average normal value was compared to the weighted average export price of all export transactions to the Community, in accordance with Article 2(11) of the Basic Regulation. The comparison was made on an ex-factory basis and at the same level of trade. For the purpose of ensuring a fair comparison, account was taken, in accordance with Article 2(10) of the Basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability, i.e. transport, handling, indirect taxes and credit expenses.

E. DUMPING MARGINS

(14) The comparison as described above showed no dumping for Cia. Brasileira Carbureto de Cálcio and a *de minimis* dumping margin of 0,4 % for Cia. de Ferro Ligas da Bahia (Ferbasa).

F. REPEAL OF MEASURES

(15) In view of the findings of no dumping and respectively a *de minimis* dumping margin for the two Brazilian exporters concerned and as this situation is not considered to be of a short-term nature, measures imposed by Regulation (EC) No 3359/93 on exports of these companies should be repealed by amending that Regulation accordingly.

(16) The Commission informed the two Brazilian exporters and the liaison committee of the European ferro-alloy industry (Euro Alliages) of the facts and considerations on the basis of which it was intended to propose the repeal of the measures. No comments were received,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1(2) of Regulation (EC) No 3359/93 the figures of 9,2 % and 22,8 % given as the rates of duty applicable to the Brazilian companies Cia. Brasileira Carbureto de Cálcio, Rio de Janeiro and Cia. de Ferro Ligas da Bahia (Ferbasa), Pojuca, Bahia, respectively, shall be replaced by the figure '0,0 %' (additional Taric codes: Cia. Brasileira Carbureto de Cálcio: 8729; Cia. de Ferro Ligas da Bahia (Ferbasa): 8730).

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, 12 February 1998.

For the Council

The President

J. BATTLE