COUNCIL REGULATION (EC) No 2315/2000

of 17 October 2000

amending Regulation (EC) No 2402/98 imposing a definitive anti-dumping duty on 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]) and in particular Article 12 thereof,

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

Whereas:

A. **PROCEDURE**

1. **Original measures**

(1) In November 1998, by Regulation (EC) No 2402/98 ([2]) (hereinafter referred to as 'the Regulation'), the Council imposed a definitive anti-dumping duty on imports of unwrought unalloyed magnesium originating in the People's Republic of China (hereinafter referred to as 'the PRC'). The measure was in the form of either:

(a) the difference between the minimum import price of ECU 2 622 per tonne and the cif Community frontier price in all cases where the latter is less than the minimum import price, and established on the basis of an invoice issued by an exporter located in the PRC to a party unrelated to it. No duty should be collected where the cif Community frontier price per tonne is equal to or higher than the minimum import price; or

(b) equal to an *ad valorem* duty of 31,7 % in all other cases not falling under subparagraph (a) above.

2. **Request for an anti-absorption review**

(2) On 22 July 1999, the Commission received a request for a review pursuant to Article 12 of Council Regulation (EC) No 384/96 (hereinafter referred to as 'the basic Regulation'). The request was lodged by the Comité de Liaison des Industries de Ferro-Alliages (Euro Alliages) on behalf of the sole known Community producer of unwrought unalloyed magnesium, Pechiney Electrométallurgie, France, alleging that all or part of the anti-dumping duty had been absorbed and therefore the anti-dumping measures referred to had led to an insufficient movement or no movement in resale prices or subsequent selling prices in the Community.

(3) The request contained prima facie evidence that the resale prices and subsequent selling prices in the Community of the product concerned did not adequately reflect the level of the antidumping measures imposed. In addition to the insufficient movement of resale and subsequent selling prices, the request also argued that most of the imports were made at heavily discounted prices by Community importers related to exporters and thus subject to the *ad valorem* duty which was insufficient to raise duty-paid prices to a level close to the minimum price.

3. **The anti-absorption investigation**

(4) On 4 September 1999, the Commission announced by a notice published in the *Official Journal of the European Communities* ([3]) the initiation of a review, pursuant to Article 12 of the basic Regulation, of the anti-dumping measures applicable to imports of unwrought unalloyed magnesium originating in the PRC.

(5) The Commission officially advised the producers/exporters, importers/traders and users/associations known to be concerned, the representatives of the exporting country and the Community producer of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing. All parties who so requested were granted hearings. Questionnaires were sent directly by the Commission to all producers/exporters, users/associations and importers/traders known to be concerned.

(6) Three exporters, two importers, one association of users, and four users belonging to the same group responded to the questionnaire. Written submissions were also received from certain other users and from one steel association. The Commission carried out verification visits at the premises of the following companies:

— Deumu Deutsche Erz- und Metallunion GmbH, Germany,

— Wogen Resources Ltd, United Kingdom.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).
([2]) OJ L 298, 7.11.1998, p. 1.
([3]) OJ C 253, 4.9.1999, p. 15.

(7) The investigation covered the period 1 September 1998 to 31 August 1999 (hereinafter referred to as 'the IP'). The IP was used to determine the level of export, resale and subsequent selling prices charged after the imposition of the anti-dumping measures.

(8) The investigation exceeded the normal duration of six months provided for in Article 12(4) of the basic Regulation due to the complexity of the investigation, notably because of the existence of two forms of duty.

B. **PRODUCT UNDER CONSIDERATION**

(9) The product reinvestigated is the same as in the investigation that led to the imposition of the measures in force, i.e. unwrought unalloyed magnesium, currently classifiable within CN codes 8104 11 00 and ex 8104 19 00 (TARIC code 8104 19 00 20).

Unwrought unalloyed magnesium comprises:

— unwrought magnesium unintentionally containing small amounts of other elements as impurities, and

— unwrought magnesium, intentionally containing added elements such as aluminium and zinc, which does not correspond to one of the alloys described in the Annex to the Regulation.

The uses of unwrought unalloyed magnesium are as follows:

— as an alloying element in the production of aluminium alloys

— desulphurisation of steel

— iron nodularisation

— chemical applications, e.g. titanium production

— others, e.g. anode production, pharmaceutical and military applications.

C. **THE REINVESTIGATION**

(10) The investigation sought to establish whether the measures previously imposed have had the intended effect and whether any failure to have such effects was as a result of increased dumping. Such failure can be identified by (i) no movement, or an insufficient movement, of resale or subsequent selling prices in the Community or, if no clear conclusion can be drawn from these price movements, (ii) a fall in the direct export prices charged by exporters to the Community.

1. **Movement of resale prices in the Community**

(a) *Examination of whether the remedial effect of the measures in force was undermined by absorption of the duty*

(11) In establishing whether resale and subsequent selling prices had moved sufficiently, a comparison was made of the price levels during the original investigation period (1 July 1996 to 30 June 1997, hereinafter referred to as 'the original IP') and those charged during the IP. The two cooperating importers in the Community and the four user companies, which purchased the product concerned exported from the PRC both during the original IP and the IP, provided information on purchase and resale prices of Chinese unwrought unalloyed magnesium. These cooperating importers and users account for 89 % of the total volume of imports into the Community during the IP.

A comparison of resale prices charged during the original IP and during the IP, including all payable duties, showed that resale prices had actually fallen since the original measures were imposed. On average prices fell by 0,7 % as compared to the level previously established in the original IP, while in fact they should have increased by more than 30 %.

(b) *Claims made by interested parties*

(12) Interested parties were given an opportunity to clarify the situation with regard to resale prices, which could justify a lack of movement in prices in the Community following the imposition of measures for reasons other than absorption of the anti-dumping duties.

None of the importers and users provided any satisfactory explanation for the decrease in resale prices in the Community. Several parties alleged that the lack of movement in resale prices was due to the decrease in export prices which in turn was caused by a general decrease in the prices of magnesium on the world market. In this context, it is difficult to understand why no party requested a review of normal value within the time limits set out in the notice of initiation in accordance with Article 12(5) of the basic Regulation. In any case, the information submitted well beyond the time limits was incomplete and did not prove the existence of a change in normal value in Norway (the reference country) or in respect of world market prices when compared to those of the original IP.

On the contrary, the information submitted in respect of prices practised by a Norwegian company showed an average selling price for the IP above the normal value established for the original IP. Moreover, the data extracted from the Metal Bulletin and submitted by one exporter showed that the average prices in the 'European free market' in the IP were 62 % higher than the Chinese free market export prices, which shows the continuation of a pattern of Chinese export prices well below international and European market prices.

(c) *Conclusion on resale prices*

(13) The investigation established a decrease in resale prices between the original IP and the IP. This was found to be enough evidence of absorption and therefore it was not necessary to investigate the development of export prices.

2. **New dumping margin**

(14) Since the undermining of the remedial effect of the measures was established, the revised level of duty had to be calculated. To that end, in accordance with Article 12(2) of the basic Regulation, export prices were reassessed and the dumping margin recalculated accordingly.

(a) *Reassessment of export prices*

(15) Export prices were reassessed pursuant to Article 2(9) of the basic Regulation because they appeared to be unreliable. Indeed, following the imposition of measures resale prices decreased slightly although they should have increased as a result of the anti-dumping duty. As already explained, no explanation had been given by any party for this lack of movement of resale prices. All this pointed to the existence of a compensatory arrangement between the exporter and the importer. Consequently, the reassessment was based on the originally established export prices, taking into account all applicable costs pursuant to Article 2(9) of the basic Regulation.

(b) *Recalculation of the dumping margin taking into account the reassessed export prices*

(16) In line with Article 12 of the basic Regulation, the countrywide margin of dumping for the Chinese exporters was recalculated. No party requested that normal value be reviewed pursuant to Article 12(5) of the basic Regulation. Therefore the reassessed export prices were compared with the normal value established during the original IP on a fob basis.

The resulting dumping margin expressed as a percentage of the cif net, free at Community frontier prices, before duty, established in the original IP is 63,4 %.

As a result the Council considers that pursuant to Article 12(3) of the basic Regulation, the measures in force should therefore be amended in accordance with the new findings.

D. **PROPOSED REVISED MEASURES**

(17) The investigation has actually shown that the reconstructed export prices have fallen and that the dumping margin has increased by the amount of this fall.

To take account of this increased dumping the anti-dumping measures should be amended. It will be recalled that two types of anti-dumping duties were imposed, i.e. a variable and an *ad valorem*. Practically all exports during the IP were subject to the *ad valorem* duty. During the course of the investigation it was found that the *ad valorem* duty was absorbed whilst no evidence could be found for the absorption of the minimum price. Therefore, the Council considers it as appropriate that the form of the measures remains the same as in the original investigation, i.e. a variable duty in the form of a minimum price for unrelated parties and an *ad valorem* duty for related parties. The *ad valorem* duty is to be amended with a view to reflecting the increased dumping.

For the *ad valorem* duty, the new level, expressed as a percentage of the cif Community frontier price, is 63,4 %. The minimum price, which is not affected by the new findings, remains the same as in the original investigation as it corresponds to the normal value adjusted to a cif Community frontier level.

(18) Since the existing duties are based on the dumping margin found in the original investigation, and since these duties have been absorbed, it was not necessary to reassess the injury margin,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Regulation (EC) No 2402/98 shall be replaced by the following:

'2. The amount of the anti-dumping duty shall be:

(a) the difference between the minimum import price of EUR 2 622 per tonne and the cif Community frontier price in all cases where the latter is:

— less than the minimum import price (TARIC additional code A 156), and

— established on the basis of an invoice issued by an exporter located in the People's Republic of China to a party unrelated to it.

No duty shall be collected where the cif Community frontier price per tonne is equal to or higher than the minimum import price;

(b) equal to an *ad valorem* duty of 63,4 % in all other cases not falling under subparagraph (a) (TARIC additional code 8900).'

Article 2

This Regulation shall enter into force on the day following that of 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 Luxembourg, 17 October 2000.

For the Council
The President
L. FABIUS