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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2238/2003

of 15 December 2003

protecting against the effects of the application of the United States Anti-Dumping Act of 1916, and actions based thereon or resulting therefrom

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The objectives of the Community include contributing to the harmonious development of world trade and to the progressive abolition of restrictions on international trade.

(2) In the United States of America ('USA'), the Anti-Dumping Act of 1916 [1] provides for civil and criminal proceedings and penalties against dumping of any articles when conducted with an intent to destroy or injure an industry in the USA, or to prevent the establishment of an industry in the USA, or to restrain or monopolise any part of trade and commerce in such articles in the USA.

(3) On 26 September 2000, the Dispute Settlement Body of the World Trade Organisation (WTO), adopting the Appellate Body report [2] and the Panel report [3], as upheld by the Appellate Body report, found the Anti-Dumping Act of 1916 to be incompatible with the US obligations under the WTO agreements, notably by providing remedies against dumping, such as the imposition of treble damages, fines and imprisonment, none of which is permitted by the General Agreement on Tariffs and Trade 1994 ('GATT 1994') or by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('AD Agreement').

(4) The USA failed to comply with the Panel and Appellate Body recommendations and rulings within the time limit of 20 December 2001. As a result, the Community requested authorisation to suspend the application to the USA of its obligations under GATT 1994 and the AD Agreement.

(5) In February 2002, the Community agreed to suspend the arbitration on its request, on the express understanding that a bill was pending in the US Congress to repeal the Anti-Dumping Act of 1916 and to terminate the on-going cases before US Courts.

(6) The Anti-Dumping Act of 1916 has yet to be repealed, and claims brought under this Act are pending before US Courts against persons under the jurisdiction of the Member States.

(7) These judicial proceedings are causing substantial litigation costs and may ultimately result in a judgment awarding treble damages.

(8) By its maintenance and application, the Anti-Dumping Act of 1916 impedes the attainment of the aforementioned objectives, affects the established legal order and has adverse effects on the interests of the Community and the interests of natural and legal persons exercising rights under the Treaty.

(9) Under these exceptional circumstances, it is necessary to take action at Community level to protect the interests of the natural and legal persons under the jurisdiction of the Member States, in particular by removing, neutralising, blocking or otherwise counteracting the effects of the Anti-Dumping Act of 1916,

HAS ADOPTED THIS REGULATION:

Article 1

No judgment of a court or tribunal and no decision of an administrative authority located in the United States of America giving effect, directly or indirectly, to the Anti-Dumping Act of 1916 or to actions based thereon or resulting therefrom, shall be recognised or be enforceable in any manner.

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[1] Enacted under the heading of 'unfair competition' in Title VIII of the Revenue Act of 1916; Title VIII of that Act is codified at United States Code 71-74, cited as 15 U.S.C §72.

[2] AB-2000-5 and AB-2000-6, 28 August 2000.

[3] United States — Anti-Dumping Act of 1916, Panel report (WT/DS/136/R, 31 March 2000).