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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2228/2003

of 22 December 2003

terminating the partial interim review of the anti-dumping measures applicable to imports of urea originating in Russia

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] (the 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) On 10 May 2001, the Council, pursuant to Regulation (EC) No 901/2001 [2], imposed a definitive anti-dumping duty on imports of urea originating in Russia. The duty took the form of a variable duty on the basis of a minimum import price (MIP).

2. *Initiation*

(2) On 13 June 2002, the Commission announced by a notice [3] published in the *Official Journal of the European Union* (notice of initiation) the initiation of a partial interim review of the anti-dumping measures applicable to imports into the Community of urea originating in Russia, pursuant to Article 11(3) of the basic Regulation.

(3) The review was initiated on the initiative of the Commission in order to examine the appropriateness of the form of the measures in force, currently an MIP, as it does not differentiate between sales made to related parties and sales made to unrelated parties, or between first sales and successive sales to the Community and it had become apparent that this could lead to enforcement problems. Consequently, the existing measures did not appear sufficient to counteract the dumping which is causing injury.

3. *Investigation*

(4) The Commission officially advised the importers, 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) An association of Community producers, an association of importers, two associations of users, one user and a company representing 10 Italian importers, traders and users made their views known in writing. All parties which so requested within the time limit, and which 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 determining the appropriateness of the measures in force.

B. **FINDINGS OF THE INVESTIGATION**

(7) The initiation of an interim review was motivated by the necessity of limiting the risk of duty avoidance. Such duty avoidance can occur in different circumstances. When exporters, currently subject to the measures imposing an MIP, export to the Community, they could be in a position to invoice at a price above the MIP, and subsequently to compensate such a price after customs declaration by an agreement with the importers. This may render the MIP ineffective, as it would mean that the product concerned is effectively still exported below the MIP to the Community. Accordingly, this could lead to subsequent resale prices in the Community which prevent the intended effects of the measure, i.e. to remove the injurious effects of dumping, from being achieved. The substantial risk of price manipulation when duties take the form of an MIP was highlighted by the findings of the European Court of Auditors in its 2000 Annual Report [4]. In order to address this problem, it was envisaged to replace the MIP by an *ad valorem* duty.

[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 127, 9.5.2001, p. 11.
[3] OJ C 140, 13.6.2002, p. 5.
[4] OJ C 359, 15.12.2001, p. 1, recitals 1.31 and 1.35.