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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1972/2002

of 5 November 2002

amending Regulation (EC) No 384/96 on the protection against dumped imports from countries not members of the European Community

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) By Regulation (EC) No 384/96 [1], the Council adopted common rules for protection against dumped imports from countries which are not members of the European Community.

(2) It is expedient to give guidance as to when parties may be considered as being related for the purpose of determining dumping. Article 143 of Commission Regulation (EEC) 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [2] contains such a definition which reflects the definition set out in Article 15.4 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 [3].

(3) Article 2(3) of Regulation (EC) No 384/96 stipulates, *inter alia*, that where because of a particular market situation sales of the like product do not permit a proper comparison, the normal value is to be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country provided that those prices are representative. It is prudent to provide for a clarification as to what circumstances could be considered as constituting a particular market situation in which sales of the like product do not permit a proper comparison. Such circumstances can, for example, occur because of the existence of barter-trade and other non-commercial processing arrangements or other market impediments. As a result market signals may not properly reflect supply and demand which in turn may have an impact on the relevant costs and prices and may also result in domestic prices being out of line with world-market prices or prices in other representative markets. Obviously, any clarification given in this context cannot be of an exhaustive nature in view of the wide variety of possible particular market situations not permitting a proper comparison.

(4) It is considered appropriate to give some guidance as to what has to be done if, pursuant to Article 2(5) of Regulation (EC) No 384/96, the records do not reasonably reflect the costs associated with the production and sale of the product under consideration, in particular in situations where because of a particular market situation sales of the like product do not permit a proper comparison. In such circumstances, the relevant data should be obtained from sources which are unaffected by such distortions. Such sources can be the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, any other reasonable basis, including information from other representative markets. The relevant data can be used either for adjusting certain items of the records of the party under consideration or, where this is not possible, for establishing the costs of the party under consideration.

(5) Article 2(7) of Regulation (EC) No 384/96, as amended in particular by Regulation (EC) No 905/98 [4] and Regulation (EC) No 2238/2000 [5] provides, *inter alia*, that in case of imports from the Russian Federation, normal value will be determined in accordance with the rules applicable in market-economy countries for those producers which demonstrate that market conditions prevail in respect of the manufacture and sale of the product concerned. In view of the very significant progress made by the Russian Federation towards the establishment of market economy conditions, as recognised by the conclusions of the Russia-European Union Summit on 29 May 2002, it is appropriate to allow normal value for Russian exporters and producers to be established in accordance with the provisions of Article 2(1) to (6) of Regulation (EC) No 384/96.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000, OJ L 257, 11.10.2000, p. 2.
[2] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 444/2002, OJ L 68, 12.3.2002, p. 11.
[3] OJ L 336, 23.12.1994, p. 119.
[4] OJ L 128, 30.4.1998, p. 18.
[5] OJ L 257, 11.10.2000, p. 2.