COUNCIL REGULATION (EC) No 153/2003

of 27 January 2003

amending the anti-dumping measures imposed by Council Regulation (EC) No 1603/2000 on imports of ethanolamines originating in the United States of America

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] (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) In July 2000, the Council, by Regulation (EC) No 1603/2000 [2], imposed definitive anti-dumping duties on imports of ethanolamines originating in the United States of America (the USA). The duties took the form of a specific duty.

2. Initiation

(2) On 13 June 2002, the Commission announced by a notice (Notice of Initiation) published in the *Official Journal of the European Communities* [3] the initiation of a partial interim review of the anti-dumping measures applicable to imports into the Community of ethanolamines originating in the USA.

(3) The review was initiated on an initiative of the Commission in order to examine the appropriateness of the measures in force. The current measure, i.e. a duty in the form of a specific duty, does not cater for situations in which imported goods have been damaged before entry into free circulation.

3. Investigation

(4) The Commission officially advised exporting producers, the importers and 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) A number of exporting producers in the country concerned, as well as Community producers and Community importers/traders made their views known in writing. All parties who so requested within the said time limit and who 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 a determination of the appropriateness of the measures in force.

B. RESULTS OF THE INVESTIGATION

(7) Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 [4] laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code foresees, for the determination of the customs value, an apportioning of the price actually paid or payable in situations where goods have been damaged before entry into free circulation.

(8) In order to avoid that an excessive amount of anti-dumping duty is levied, the specific duty should, in case of damaged goods, be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

(9) Community producers argued that the term 'damaged' is vague and might be subject to wide interpretations that could lead to circumvention practices or even render the anti-dumping duties ineffective. In order to avoid circumvention, it was submitted that whenever the customs authorities consider a good to be damaged, a second, independent expert opinion should be provided on the question of whether the goods are damaged or not.

(10) It should be noted that the valuation of goods, damaged or not, is carried out by the customs authorities according to the well-established rules set out by the Community Customs Code that do not allow wide interpretations that could render the anti-dumping duty ineffective. In view of these established rules, there is no need for specific provisions covering goods subject to anti-dumping measures. The request to introduce a mandatory second expert opinion is therefore rejected.

[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 185, 25.7.2000, p. 1.
[3] OJ C 140, 13.6.2002, p. 17.
[4] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 444/2002 (OJ L 68, 12.3.2002, p. 11).

(11) A related importer submitted that no anti-dumping duty should be imposed if a product is damaged as it must not be considered a like product.

(12) In this respect, a product does not automatically cease to be a like product when it is damaged. It may still have the same physical and chemical characteristics and be used for the same purposes, thereby possibly inflicting injury to the Community industry. The argument is therefore rejected.

(13) It is therefore concluded that in the absence of any substantiated argument from interested parties, in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value, the specific duty shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable,

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph shall be added to Article 1 of Regulation (EC) No 1603/2000:

'4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93, the amount of the anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.'

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 Brussels, 27 January 2003.

For the Council

The President

G. PAPANDREOU