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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 989/2004

of 17 May 2004

amending Regulation (EC) No 151/2003 imposing a definitive anti-dumping duty on imports of certain grain oriented electrical sheets 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 Articles 8, 11(3), 21 and 22(c) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 990/2004 [2] the Council amended Regulation (EC) No 151/2003 imposing a definitive anti-dumping duty on imports into the Community of certain grain oriented electrical sheets ('the product concerned') originating in Russia [3].

(2) The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, is set for imports of the product concerned originating in Russia at 40,1 % manufactured by the Novolipetsky Iron & Steel Corporation (NLMK) and at 14,7 % manufactured by the VizStal Ltd.

2. Investigation

(3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union* [4] the initiation of a partial interim review of measures in force ('measures') pursuant to Article 11(3) and 22(c) of the basic Regulation.

(4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('Enlargement') and bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

3. Parties concerned by the investigation

(5) All interested parties known to Commission, including the Community industry, associations of producers or users in the Community, exporting producers in the country concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 ('the EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

(6) In this regard, the following interested parties made their views known:

(a) Community producers Association:

— European Confederation of Iron and Steel Industries (Eurofer);

(b) Exporting producers:

— Novolipetsky Iron & Steel Corporation (NLMK), Lipetsk,

— VizStal Ltd., Ekaterinburg.

B. PRODUCT UNDER CONSIDERATION

(7) The product under consideration is the same as in the original investigation, i.e. grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia, falling within CN codes 7225 11 00 and 7226 11 00. This product is used for electromagnetic appliances and in installations such as power and distribution transformers.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] See page 5 of this Official Journal.
[3] OJ L 25, 30.1.2003, p. 7.
[4] OJ C 70, 20.3.2004, p. 15.

(8) In the rather complex manufacturing process of GOES, grain structures are orientated uniformly in the direction of the rolling of the sheet or of the strip in order to allow it to conduct a magnetic field with a high degree of efficiency. The product in question has to comply with specifications concerning the magnetic induction, the pile factor as well as the highest admissible level of re-magnetisation losses. In general, both sides of the product are covered with a thin isolating coating.

C. RESULTS OF THE INVESTIGATION

1. Submissions of interested parties in exporting countries

(9) Two Russian exporting producers and the Russian authorities claimed that due to the high level of the anti-dumping duties and as a consequence of the extension of the measures to the EU10, their traditional trade flows to the EU10 would be significantly disrupted.

(10) In particular, they claimed that the sudden sharp price increases triggered by the high level of the anti-dumping duties rendered the product prohibitively expensive for electromagnetic appliances and in installations such as power and distribution transformers.

2. Comments from the Community Industry

(11) The Community Industry stated that although average prices in the EU10 were significantly lower than those in the European Union as constituted prior to 1 May 2004 ('the EU15'), it would not oppose any proposals for intermediate measures to be taken over a transitional period which do not adversely affect its situation.

3. Comments from Member States

(12) The authorities of certain Member States of the EU10 considered that special transitional arrangements should apply to imports of the product concerned from Russia following the Enlargement.

(13) In this regard, it was argued that the product concerned is of significant importance for industrial end-users in the EU10.

4. Assessment

(14) On the basis of the available data and information, an analysis was made which confirmed that the import volumes of the product concerned coming from Russia into the EU10 were significant in 2002 and 2003.

(15) Considering that the product concerned is of significant importance for traditional industrial end-users in the EU10 and the relatively high level of anti-dumping duty, it was therefore concluded that it is in the Community interest to gradually adapt the measures currently in force in order to avoid a sudden and excessively negative effect on all interested parties.

5. Conclusion

(16) All these various aspects and interests have been taken into account and considered as a whole. It emerges from this that the EU10 importers' and users' interests would be substantially negatively affected by the sudden application of the existing measures if they were not to be temporarily adapted.

(17) However, by contrast, as the interest of the Community Industry itself confirmed it, its interests would not be unduly negatively affected if the measures were to be temporarily adapted as they cannot currently fully satisfy the demands of customers in the EU10.

(18) In such circumstances, it can reasonably be concluded that it is not in the Community interest to apply the existing measures without adaptation and than the temporary adaptation of the existing measures with regard to imports of the product concerned into the EU10 would not be such as to significantly undermine the desired level of trade defence.

(19) To this end, different ways were examined on how to best protect the Community Industry from injurious dumping whilst, at the same time, taking into account the Community interest aspects by lessening the economic shock of the anti-dumping duties to traditional buyers in the EU10 during the period of economic adjustment following the Enlargement.

(20) It was considered that this could be best achieved by allowing the traditional export volumes from Russia to the EU10 to be imported free of anti-dumping duties for a transitional period. In this context, any exports to the EU10 above these traditional export volumes would be subject to the normal anti-dumping duties, as would exports to the EU15.

6. Undertakings

(21) Having assessed the different options on how best to allow these traditional export flows to the EU10 to continue, it was considered that the most appropriate means was through the acceptance of voluntary undertakings from the cooperating parties with element for quantitative ceilings. Therefore, in accordance with Article 8(2) of the basic Regulation, undertakings were suggested by the Commission to the exporting producers concerned and, as a result, undertakings were subsequently offered by 2 exporting producers of the product concerned in Russia.

(22) In this context, it should be noted that in accordance with Article 22(c) of the basic Regulation, the special circumstances of the Enlargement were taken into account when the terms of the undertakings were established. They constitute a special measure in that they provide a temporary way of adapting existing measures for the enlarged EU of 25 Member States.

(23) Import volumes ('ceilings') were therefore established for the exporting producers in Russia, using as a basis their average traditional export volumes to EU10 in 2001, 2002 and 2003. It should be noted, however, that abnormal increases in export volumes to the EU10 observed in the last few months of 2003 and the first months of 2004 were deducted from their traditional volumes used for determining the ceilings.

(24) When selling to the EU10 under the terms of their undertakings, the exporting producers concerned should agree to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers should therefore be aware that any undertaking offer can only be considered as practicable, and therefore acceptable if, for sales covered by the undertakings, they would broadly maintain such traditional patterns of trade with their customers in the EU10.

(25) The exporting producers should also be aware that, under the terms of the undertakings, if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place at the level specified in Regulation (EC) No 151/2003 or it may adjust the level of the ceiling, or it may take other remedial action.

(26) Accordingly, any undertaking offers respecting the above conditions may be accepted by the Commission, by Commission Regulation.

D. **AMENDMENT OF REGULATION (EC) No 990/2004**

(27) In view of the above, it is necessary to provide, in the event of undertakings being accepted by the Commission in a subsequent Commission Regulation, for the possibility to exempt imports to the Community made under the terms of such undertakings from the anti-dumping duty imposed by Regulation (EC) No 151/2003, by amending that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2 of Regulation (EC) No 151/2003, as last amended by Regulation (EC) No 990/2004, is hereby replaced by the following:

'Article 2

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.

2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

(a) the goods declared and presented to customs correspond precisely to the product described in Article 1;

(b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

(c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.'.

Article 2

The text set out in the Annex to this Regulation shall be added to Regulation (EC) No 151/2003.

Article 3

This Regulation shall enter into force the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 May 2004.

For the Council
The President
B. COWEN

ANNEX

'ANNEX

The following elements shall be indicated on the commercial invoice accompanying the company's sales of grain oriented electrical sheets to the Community which are subject to the Undertaking:

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".

2. The name of the company mentioned in Article 1 of Commission Regulation [INSERT NUMBER] issuing the commercial invoice.

3. The commercial invoice number.

4. The date of issue of the commercial invoice.

5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.

6. The exact description of the goods, including:
   — Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN I, PCN 2 etc),
   — plain language description of the goods corresponding to the PCN concerned (e.g. PCN 1: PCN 2: etc),
   — company product code number (CPC) (if applicable),
   — CN code,
   — quantity (in tonnes).

7. The description of the terms of the sale, including:
   — price per tonne,
   — the applicable payment terms,
   — the applicable delivery terms,
   — total discounts and rebates.

8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.

9. The name of the official of the company that has issued the invoice and the following signed declaration:
   "I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation (EC) No [INSERT NUMBER]. I declare that the information provided in this invoice is complete and correct."

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