COMMISSION

COMMISSION DECISION

of 20 December 1979

on surveillance and protective measures which Member States may be authorized to take in respect of imports of certain products originating in third countries and put into free circulation in another Member State

(80/47/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 115 thereof,

Whereas Article 30 *et seq.* of the Treaty, concerning the elimination of quantitative restrictions and all measures having equivalent effect, apply without distinction to products originating in the Community and those that have been put into free circulation in any of the Member States irrespective of their origin ;

Whereas under these arrangements the requirement, be it purely formal, in intra-Community trade of an import licence or any similar procedure is prohibited ;

Whereas, in addition, Article 9 (2) of the Treaty precludes any administrative procedure designed to establish different rules for the movement of goods according to whether they originate in the Community or originated in third countries and have been put into free circulation in one of the Member States ;

Whereas, however, the full application of these principles presupposes the effective establishment of a common commercial policy ; whereas such a policy has been introduced through the establishment of common rules, whether unilaterally or under an Agreement, covering imports into the Community of products not subject to quantitative restrictions and providing for the implementation by the Community of the surveillance and protective measures necessary to safeguard the Community's interests ; whereas such measures may be limited to imports into certain regions of the Community ;

Whereas the establishment of a common commercial policy is not yet complete as regards the measures relating to liberalization or quantitative restriction of imports of products from third countries ; whereas the measures applied in respect of some of these products by the Member States have not yet been replaced by common rules ; whereas the Member States are still empowered to apply these measures, in accordance with the Community procedures and decisions on the progressive coordination and standardization of the Member States' import arrangements *vis-à-vis* third countries ;

Whereas in addition the establishment of common rules for imports of certain textile products originating in third countries has had to be carried out progressively, with the result that the allocation of Community quantitative limits or quotas among the Member States can be adjusted only gradually to the supply requirements in those States ;

Whereas the fact that the common commercial policy has not yet been fully established means that there will still be disparities among the Member States' commercial policies which are likely to cause deflections of trade, which Article 115 of the Treaty is designed to prevent where such deflections lead to economic difficulties in one or more of the Member States ;

Whereas to this end the Commission is empowered to authorize the Member States, where such economic difficulties so warrant, to take intra-Community surveillance measures or protective measures, by way of derogation from the principle of free movement within the Community of goods originating in third countries and put into free circulation in one of the Member States ;

Whereas, in cases where a surveillance measure is authorized, import documents must be issued automatically, free of charge, within a given period and for any quantity requested ; whereas, in view of past experience and the need to cause the least possible disturbance to the functioning of the common market, the application of surveillance measures should be

restricted to cases where there is a danger that imports may lead in the Member States to economic difficulties within the meaning of Article 115 of the Treaty ;

Whereas the information and grounds supplied by the Member States in support of their requests for authorization to introduce the measures in question must be such as to enable the Commission to assess the need for such authorization ;

Whereas, should a Member State request authorization to apply protective measures, the time limit for the issue of import documents must be extended if the volume covered by the applications for documents pending reaches a certain level ;

Whereas, in order to ensure that checks on origin do not hamper intra-Community trade, it should be provided that the Member States, as a general rule, should request from the importer, as part of the completion of formalities connected with the importation of a product from another Member State, only a simple statement of the origin of the product as he can be reasonably expected to know it,

HAS ADOPTED THIS DECISION :

Article 1

Scope

This Decision shall apply to imports into a Member State of products originating in a third country which have been put into free circulation in the Community, in cases where they are subject either to quantitative import restrictions in that Member State or to voluntary export restraint measures applied by the third country concerned by virtue of a trade agreement and are likely to be the subject of protective measures under Article 115 of the Treaty.

Article 2

Intra-Community surveillance

1. Where there is a danger that imports into a Member State of a product referred to in Article 1 will give rise to economic difficulties, imports of that product may, following an authorization given by the Commission for a specific period, be made subject to the issue of an import document.

2. Without prejudice to the provisions of Article 3, this document shall be issued by the Member State concerned, for any quantity requested and free of charge, within a maximum period of five working days from the date of the application by the importer irrespective of where he has his place of business in the Community.

3. For the purpose of obtaining the prior authorization referred to in paragraph 1, the Member State shall supply the following particulars in its request to the Commission :

(a) a description of the product and details of its trade designation, its heading number in the Common Customs Tariff, the NIMEXE code and its country of origin ;

(b) the rules governing direct imports *vis-à-vis* the country of origin and other third countries, including the volume and/or quantity of import opportunities, together with the economic considerations on which such are based ;

(c) the volume or quantity of imports of the product in question :

— originating in the third country concerned, broken down between direct imports and imports of products in free circulation,

— originating in all third countries,

— originating in the Community ;

(d) the economic difficulties of which there is alleged to be a danger, as indicated by factors such as consumption of the product and the respective market shares held by national production, the third country concerned and all third countries.

The information required under subparagraphs (c) and (d) shall cover the two preceding years and the current year. Where this information cannot be supplied with the accuracy required or cannot be supplied in time, the Member State's request shall contain the information available.

4. The Member State that has received the authorization referred to in paragraph 1 may require from an applicant for an import document only the following information and data :

(a) name of the importer and of the consignor in the exporting Member State ;

(b) the country of origin and the exporting Member State ;

(c) a description of the product with details of :

— its trade designation,

— its heading number in the Common Customs Tariff and the NIMEXE code ;

(d) the value and the quantity of the product in the units customarily in use in trade ;

(e) the scheduled date or dates for delivery ;

(f) supporting evidence that the product is in free circulation. Failing such supporting evidence, the validity of the import document shall be limited to a period of one month following the issue of the document.

Article 3

Protective measures

1. Where imports into a Member State of a product referred to in Article 1 give rise to economic difficulties, the Member State in question may take protective measures after obtaining the prior authorization of the Commission, which shall determine the conditions and details of such measures.

2. For the purpose of obtaining such authorization the Member State shall supply in its request to the Commission the following particulars and data, in addition to those referred to in Article 2 (3) (a) and (b) :

(a) the exporting Member State ;

(b) the date on which the application for an import document was made ;

(c) the volume or quantity of imports of the product in question actually effected or authorized :

(i) originating in the third country concerned, broken down between direct imports and imports of production in free circulation,

(ii) originating in other third countries in respect of which the requesting Member State maintains similar import arrangements or arrangements having equivalent effect,

(iii) originating in all third countries,

(iv) originating in the Community ;

(d) where possible, the volume or quantity of re-exports of the product originating in the third country concerned to other Member States and to third countries ;

(e) the alleged economic difficulties as shown by the trend of such factors as : production, utilization of capacity, consumption, respective market shares held by the third country concerned, all third countries and national production, prices, profits or losses, employment.

The information required under subparagraphs (c), (d) and (e) shall cover the two preceding years and the current year. Where this information cannot be supplied with the accuracy required or cannot be supplied in time, the Member State's request shall contain the information available.

3. The introduction of the request by the Member States may not prevent the issue under the conditions and within the period laid down in Article 2 of import documents for which application was made prior to the Commission's decision.

4. However, where the Member State finds that the volume or total quantity covered by applications pending in respect of the product in question originating in the third country concerned is more than, either 5 % of possible direct imports from the third country concerned or 1 % of the total extra-EEC imports during the latest 12 month period for which statistical information is available :

(i) the maximum period for the issue of import documents shall be increased to 10 working days from the date of the application by the importer ;

(ii) the Member State may reject the application for import documents if the Commission's decision authorizes it to do so.

5. The Member State shall inform applicants for import documents of the introduction of a request for protective measures, a copy of which shall be sent to the other Member States.

6. The Commission shall decide on the request of the Member State within five working days of its receipt.

Article 4

Proof of origin

1. As part of the completion of formalities in connection with the importation of products which are subject to intra-Community surveillance measures or protective measures, the relevant authorities of the importing Member State may ask the importer to state the origin of the products on the customs declaration or on the application for an import document.

2. Additional proof may be requested only in cases where serious and well-founded doubts make such proof essential in order to establish the true origin of the products in question. However, a request for such additional proof may not in itself prevent the import of the goods.

Article 5

Transitional and final provisions

1. This Decision shall apply from 1 April 1980.

2. Commission Decision 71/202/EEC of 12 May 1971 (1), as amended by Decision 73/55/EEC of 9 March 1973 (2), shall be repealed as from that date.

3. Measures taken by the Member States in accordance with Article 1 of Decision 71/202/EEC shall remain valid until the grant of an authorization by the Commission pursuant to Article 2 of this Decision, or until 30 June 1980, whichever is the earlier.

4. Requests for such authorizations must be lodged with the Commission not later than 30 April 1980.

5. The Commission's decision on the requests will be taken not later than 30 June 1980.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 20 December 1979.

For the Commission

Wilhelm HAFERKAMP

Vice-President

(1) OJ No L 121, 3. 6. 1971, p. 26.
(2) OJ No L 80, 28. 3. 1973, p. 22.