II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 July 1987

on surveillance and protective measures which Member States may be authorized to take pursuant to Article 115 of the EEC Treaty

(87/433/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 sequitur* 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 the establishment of a common commercial policy is not yet complete ; whereas the measures applied by the Member States in respect of some products from third countries have not yet been replaced by uniform common rules ;

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 ;

Whereas to this end the Commission is empowered to authorize the Member States to take intra-Community surveillance measures or protective measures, notwithstanding 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, however, Article 115 provides that these measures can be authorized only where necessary and that the Commission shall give priority to those measures which cause least disturbance to the functioning of the common market ; whereas the result is that at the present stage of establishment of the common market the measures under Article 115 of the Treaty should be authorized only where deflections of trade lead to economic difficulties or jeopardize the effectiveness of commercial policy measures taken by Member States pursuant to the Community's international obligations ;

Whereas the Single European Act provides for the establishment, as from 1 January 1993, of an area without internal frontiers in which goods, services and capital will be able to move freely ; whereas this implies, on the one hand, that the disparities still existing among commercial policies applied by the Member States shall be progressively eliminated or reduced and, on the other, that the Commission must be fully aware of these objectives when assessing the need to authorize measures pursuant to Article 115 of the Treaty ;

Whereas, by its Decision 80/47/EEC 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 [1] the Commission established certain criteria and procedures to be followed in implementing Article 115 of the Treaty;

Whereas, in view of past experience and the action programme the Community has set itself to establish the single market, Decision 80/47/EEC should be amended and in particular its scope should be extended to all those cases where disparities exist in commercial policy measures taken by the Member States in compliance with the Treaty, including cases where disparities in tariff measures are still authorized, and some of the criteria and procedures it lays down should be made more specific; whereas in order to accommodate these amendments the aforesaid Decision should be recast as a single act;

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 if surveillance measures are requested on the grounds that imports may lead in a Member State to economic difficulties, the reality of such danger should be assessed in the light of deflections of trade observed in the past and the level of the import opportunities granted by the Community to the third country in question;

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

Whereas it should be provided that, if necessary, the Commission may hold an inquiry to check the validity of the information at its disposal;

Whereas the measures adopted pursuant to Article 115 of the Treaty, by virtue of the fact that they not only constitute an exception from the provisions of Articles 9 and 30 of the Treaty but also hamper the establishment of a common commercial policy as laid down in Article 113 of the Treaty, must be interpreted and applied strictly; whereas, to take account of this and also of the objectives laid down by the Single European Act, such measures should be applied only for a limited period and where the gravity of the situation so warrants;

Whereas in order to ensure that intra-Community trade is not hampered it should be provided that the Member States, as a general rule, must request from the importer, as part of the completion of formalities connected with the import of a product from another Member State, only certain information and data; whereas, as regards checks on origin, the Member States as a general rule must ask only for a simple statement of the origin of the product as the importer 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 and put into free circulation in the Community which are not subject to uniform conditions of import in the Member States.

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. As a general rule the Commission will not give the authorization referred to in paragraph 1 unless:

(a) there have been significant imports of the product in question from other Member States in the calendar year preceding the year in which the application is made;

(b) import opportunities for the product in question opened by the Community *vis-à-vis* the third country of origin exceed 1 % of the total import opportunities opened by the Community *vis-à-vis* all third countries subject to similar rules.

3. Without prejudice to Article 3, the import 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 application by the importer irrespective of where he has his place of business in the Community.

[1] OJ No L 16, 22. 1. 1980, p. 14.

4. For the purpose of obtaining the 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 where appropriate the tariff arrangements, the volume and/or quantity of import opportunities and also the economic considerations on which the rules 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 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 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.

5. 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) details identifying the importer and 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 : if the products are not yet in free circulation on the date when the application for importation is made or if the supporting evidence cannot be provided by this date, the import document shall be granted but its validity shall be limited to one month following receipt of the document by the applicant.

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 authorization by the Commission, which shall determine the conditions and details of such measures.

2. The Commission shall only grant authorization for a limited period and where the gravity of the situation so warrants.

3. For the purpose of obtaining 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 (4) (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 :

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

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

— originating in all third countries,

— 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, sales, market shares held by the third country concerned, all third countries and national production respectively, prices (that is to say, depressed prices or prevention of normal price rises), profits or losses, employment ;

(f) at the Commission's request, the measures taken or proposed to remedy the situation of the sector in question.

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. Where it considers it necessary, the Commission may hold an inquiry to check the validity of the information supplied by Member States.

In that case it may, where a lack of protective measures would result in the danger of material injury to the sector in question, authorize the application of protective measures on a provisional basis, pending the results of the inquiry.

4. The introduction of the request by the Member State 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.

5. 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 total extra-EEC imports during the last 12-month period for which statistical information is available :

— 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,

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

6. The Member State shall make the request for protective measures by telex or telefax. A copy shall be sent simultaneously and by the same means to the relevant departments designated by the other Member States for that purpose. It shall inform applicants for import documents of the introduction of a request for protective measures.

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

Article 4

Proof of origin

1. As part of completion of formalities in connection with the import 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 at customs clearance and 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.

Final provisions

Article 5

The procedures laid down by this Decision shall apply where the effectiveness of commercial policy measures applied by the Member States pursuant to the international obligations of the Community is jeopardized by deflections of trade with the exception of the elements referred to in Article 2 (4) (d) and Article 3 (3) (e).

Article 6

1. This Decision shall apply with effect from 1 October 1987.

2. Commission Decision 80/47/EEC shall be repealed as from that date. References to the repealed Decision shall be understood to refer to this Decision.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 22 July 1987.

For the Commission

Willy DE CLERCQ

Member of the Commission