REGULATION (EEC) No 2011/73 OF THE COUNCIL

of 24 July 1973

amending Regulation (EEC) No 459/68 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113 and 227 thereof;

Having regard to the Regulations establishing the common organization of agricultural markets and the Regulations adopted under Article 235 of the Treaty, applicable to goods manufactured from agricultural products, and in particular the provisions of those Regulations which allow for derogation from the general principle that protective measures at frontiers may be replaced solely by the measures provided for in those Regulations;

Having regard to the proposal from the Commission;

Whereas experience acquired in the application of Council Regulation (EEC) No 459/68 [1] of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community indicates that it is necessary to amend it on a limited number of points and in view of the international obligations of the Community and the Member States, such amendment must be made with due regard for the rules laid down in Article VI of the General Agreement on Tariff and Trade (GATT) and the Agreement on the implementation of that Article;

Whereas the main aim of this amendment should be the rationalization of certain procedures;

Whereas the close collaboration between the Commission and the Member States enables the Commission to be duly informed, within the Committee, referred to in Article 12 of Regulation (EEC) No 459/68 when a Member State has ascertained whether or not there are grounds for following up a complaint, and it is therefore unnecessary for copies of the requests for information formulated by the Commission to be sent to the Member States;

Whereas, when it is necessary to verify in countries which are not members of the Community the information collected during an examination of the matter, such investigations should be made after consultation with the Committee, by the Member States or by the Commission, assisted by officials from the Member States;

Whereas it follows from the Regulation that only the rules for anti-dumping procedures are applicable by analogy to protection against the granting of bounties or subsidies; whereas it should consequently be made quite clear that the field of application of the terms 'Community industry' and 'like products' extends only to anti-dumping procedures;

Whereas it is desirable that a written procedure for consultation within the Committee be introduced;

Whereas undertakings by exporters to end dumping practices harmful to Community production have an important place in the practical application of the Regulation; whereas, therefore, it is essential that the Community take precautions against the breach or withdrawal of such undertakings by stipulating that the Commission may recommence examination of the facts as soon as it has informed the Member States and that, while such understandings are in force, it should be possible, after consideration of their effect or of the conditions attaching to their application, to review and, where necessary, amend or terminate them;

HAS ADOPTED THIS REGULATION:

Article 1

The following shall be substituted for Article 4 (5) (a), first subparagraph, of Regulation (EEC) No 459/68:

'For the purposes of this title, the term 'Community industry' shall be interpreted as referring to the Community producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total Community production of those products; except that:'

Article 2

The following shall be substituted for Article 5 of Regulation (EEC) No 459/68:

"For the purposes of this title, the term 'like products' shall be interpreted to mean a product which is identical, ie alike in all respects, to the product under consideration, or, in the absence of such product, another product which has characteristics closely resembling those of the product under consideration.'

[1] OJ No L 93, 17. 4. 1968, p. 1.

Article 3

The following shall be substituted for Article 8 (1) of Regulation (EEC) No 459/68 :

'Where a Member State is satisfied that a complaint contains the particulars specified in Article 7, it shall at once inform the Commission, either by letter or orally during the consultations provided for in Article 12. It shall forward to the Commission any other information it considers necessary for an examination of the matter at Community level.'

Article 4

The following shall be substituted for Article 9 of Regulation (EEC) No 459/68 :

'Where a Member State finds that the complaint does not contain the particulars specified in Article 7 or that the margin of dumping, the volume of dumped imports, actual or potential, or the injury is negligible, it shall so inform the Commission, either by letter or orally during the consultations provided for in Article 12. The latter shall immediately advise the other Member States. If, within a period of 10 working days from the date on which the Commission was informed, the latter has not raised any objection, whether at the request of a Member State or on its own initiative, the complaint shall be rejected forthwith by the Member State to whom it was sent, or by the Commission if the complaint was submitted to the Commission under Article 6 (2) (b) ; in all other cases, Article 10 (1) shall apply.'

Article 5

The following shall be substituted for Article 10 (3) (b) of Regulation (EEC) No 459/68 :

'However, when it is necessary to carry out investigations in countries which are not members of the Community in order to verify information collected or to obtain further details, the Commission shall hear the opinions expressed within the Committee referred to in Article 12 before either proceeding itself, when a rapid and direct examination of the matter is desirable and there are no special objections, or before requesting the Member States to proceed, in accordance with paragraph 5. The investigations of the Commission may be carried out only if the undertakings concerned give their consent and the government of the country in question has been officially notified and raises no objection. The Commission shall be assisted by officials of one or more Member States if the latter have so requested, in all investigations conducted on the spot.'

Article 6

The following paragraph shall be added to Article 12 of Regulation (EEC) No 459/68 :

'4. Where necessary, consultation may be in writing only ; in such case the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation.'

Article 7

The following subparagraph shall be added to Article 14 (2) of Regulation (EEC) No 459/68 :

'(d) Where the Commission finds that the undertaking of exporters is being evaded or no longer observed or has been withdrawn and that, as a result, protective measures might be necessary, it shall forthwith so inform the Member States and shall recommence the examination of the facts in accordance with Article 10 ;

(e) The provisions of Article 18 (1) shall apply *mutatis mutandis* to the undertakings given by exporters on the basis of this Article. Any modification of such undertakings shall be made in accordance with the procedure laid down in this Article.'

Article 8

This Regulation shall enter into force on the third day following 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, 24 July 1973.

For the Council

The President

I. NØRGAARD