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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2641/84

of 17 September 1984

on the strengthening of the common commercial policy with regard in particular to protection against illicit commercial practices

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the rules establishing the common organization of agricultural markets and the rules adopted under Article 235 of the Treaty, applicable to goods processed from agricultural products, and in particular those provisions thereof which allow for derogation from the general principle that any quantitative restriction or measure having equivalent effect may be replaced solely by the measures provided for in those instruments,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the common commercial policy must be based on uniform principles, notably with regard to commercial protection; whereas Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (3) and the rules for imports laid down pursuant to Regulation (EEC) No 288/82 (4), as amended by Regulations (EEC) No 899/83 (5), (EEC) No 1765/82 (6) and (EEC) No 1766/82 (7), as amended by Regulations (EEC) No 35/83 (8) and (EEC) No 101/84 (9), constitute important components of that policy;

Whereas in the light of experience and of the conclusions of the European Council of June 1982, which considered that it was of the highest importance to defend vigorously the legitimate interests of the Community in the appropriate bodies, in particular GATT, and to make sure the Community, in managing trade policy, acts with as much speed and efficiency as its trading partners, it has become apparent that the common commercial policy needs to be strengthened, notably in the fields not covered by the rules already adopted;

Whereas to this end it is advisable to provide the Community with procedures enabling it:

— to respond to any illicit commercial practice with a view to removing the injury resulting therefrom,

— to ensure full exercise of the Community's rights with regard to the commercial practices of third countries;

Whereas, in particular, the Community should be enabled to remove the injury resulting from third countries' practices whose illicit nature is evident from their incompatibility regarding international trade practices either with international law or with the generally accepted rules;

Whereas the measures taken under the procedures in question should, however, be without prejudice to other measures in cases not covered by this Regulation which might be adopted directly pursuant to Article 113 of the Treaty;

Whereas the Community must act in compliance with its international obligations and, where such obligations result from agreements, maintain the balance of rights and obligations which it is the purpose of those agreements to establish;

(1) OJ No C 205, 1. 8. 1983, p. 2.
(2) OJ No C 211, 8. 8. 1983, p. 24.
(3) OJ No L 201, 30. 7. 1984, p. 1.
(4) OJ No L 35, 9. 2. 1982, p. 1.
(5) OJ No L 103, 21. 4. 1983, p. 1.
(6) OJ No L 195, 5. 7. 1982, p. 1.
(7) OJ No L 195, 5. 7. 1982, p. 21.
(8) OJ No L 5, 7. 1. 1983, p. 12.
(9) OJ No L 14, 17. 1. 1984, p. 7.

Whereas it is necessary to confirm, by establishing a formal complaints procedure, the right of Community industry to submit to the Commission any complaint regarding illicit commercial practices by third countries ;

Whereas for the purposes of implementation of this Regulation there should be cooperation between the Member States and the Commission and, to this end, arrangements should be made for consultations within an advisory committee ;

Whereas it is appropriate to lay down clearly the rules of procedure to be followed during the examination, in particular the rights and obligations of the Community authorities and the parties involved, and the conditions under which interested parties may have access to information and may ask to be informed of the essential facts and considerations resulting from the examination procedure ;

Whereas, in conducting the defence of its commercial interests, the Community needs to have at its disposal a decision-making process which permits rapid and effective action,

HAS ADOPTED THIS REGULATION :

Article 1

Aims

This Regulation establishes procedures in the matter of commercial policy which, subject to compliance with existing international obligations and procedures, are aimed at :

(a) responding to any illicit commercial practice with a view to removing the injury resulting therefrom ;

(b) ensuring full exercise of the Community's rights with regard to the commercial practices of third countries.

Article 2

Definitions

1. For the purposes of this Regulation, illicit commercial practices shall be any international trade practices attributable to third countries which are incompatible with international law or with the generally accepted rules.

2. For the purposes of this Regulation, the Community's rights shall be those international trade rights of which it may avail itself either under international law or under generally accepted rules.

3. For the purposes of this Regulation, injury shall be any material injury caused or threatened to Community industry.

4. The term 'Community industry' shall be taken to mean all Community producers :

— of products identical or similar to the product which is the subject of illicit practices or of products competing directly with that product, or

— who are consumers or processors of the product which is the subject of illicit practices,

or all those producers whose combined output constitutes a major proportion of total Community production of the products in question ; however :

(a) when producers are related to the exporters or importers or are themselves importers of the product alleged to be the subject of illicit practices, the term 'Community industry' may be interpreted as referring to the rest of the producers ;

(b) in particular circumstances, the producers within a region of the Community may be regarded as the Community industry if their collective output constitutes the major proportion of the output of the product in question in the Member State or Member States within which the region is located provided that :

(i) where the illicit practice concerns imports into the Community, their effect is concentrated in that Member State or those Member States,

(ii) where the illicit practice concerns Community exports to a third country, a significant proportion of the output of those producers is exported to the third country concerned.

Article 3

Complaint on behalf of Community producers

1. Any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers that it has suffered injury as a result of illicit commercial practices may lodge a written complaint.

2. The complaint must contain sufficient evidence of the existence of illicit commercial practices and the injury resulting therefrom. Proof of injury must be given on the basis of the factors indicated in Article 8.

3. The complaint shall be submitted, to the Commission, which shall send a copy thereof to the Member States.

4. The complaint may be withdrawn, in which case the procedure may be terminated unless such termination would not be in the interests of the Community.

5. Where it becomes apparent after consultation that the complaint does not provide sufficient evidence to justify initiating an investigation, then the complainant shall be so informed.

Article 4

Referral by a Member State

1. Any Member State may ask the Commission to initiate the procedures referred to in Article 1.

2. It shall supply the Commission with the necessary evidence to support its request. Where illicit commercial practices are alleged, proof thereof and of the injury resulting therefrom must be given on the basis of the factors indicated in Article 8.

3. The Commission shall notify the other Member States of the requests without delay.

4. Where it becomes apparent after consultation that the request does not provide sufficient evidence to justify initiating an investigation, then the Member State shall be so informed.

Article 5

Consultation procedure

1. For the purpose of consultations pursuant to this Regulation, an advisory committee, hereinafter referred to as 'the Committee', is hereby set up and shall consist of representatives of each Member State, with a representative of the Commission as chairman.

2. Consultations shall be initiated at the request of a Member State or on the initiative of the Commission. The chairman of the Committee shall provide the Member States, as promptly as possible, with all relevant information in his possession.

3. The Committee shall meet when convened by its chairman.

4. Where necessary, consultations may be in writing. In such case the Commission shall notify in writing the Member States who, within a period of eight working days from such notification, shall be entitled to express their opinions in writing or to request oral consultations.

Article 6

Community examination procedure

1. Where, after consultation, it is apparent to the Commission that there is sufficient evidence to justify initiating an examination procedure and that it is necessary in the interest of the Community, the Commission shall act as follows:

(a) it shall announce the initiation of an examination procedure in the *Official Journal of the European Communities;* such announcement shall indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with paragraph 5;

(b) it shall so officially notify the representatives of the country or countries which are the subject of the procedure, with whom, where appropriate, consultations may be held;

(c) it shall conduct the examination at Community level, acting in cooperation with the Member States.

2. (a) If necessary, and notably in cases of allegations of illicit commercial practices, the Commission shall seek all the information it deems necessary and attempt to check this information with the importers, traders, agents, producers, trade associations and organizations, provided that the undertakings or organizations concerned give their consent.

(b) Where necessary, the Commission shall carry out investigations in the territory of third countries, provided that the governments of the countries concerned have been officially notified and raise no objection within a reasonable period.

(c) The Commission shall be assisted in its investigation by officials of the Member State in whose territory the checks are carried out, provided that the Member State in question so requests.

3. Member States shall supply the Commission, upon request, with all information necessary for the examination, in accordance with the detailed arrangements laid down by the Commission.

4. (a) The complainants and the exporters and importers concerned, as well as the representatives of the principal exporting or importing country or countries concerned, may inspect all information made available to the Commission except for internal documents for the use of the Commission and the administrations, provided that such information is relevant to the protection of their interests and not confidential within the meaning of Article 7 and that it is used by the Commission in its examination procedure. The persons concerned shall address a reasoned request in writing to the Commission, indicating the information required.

(b) The complainants and the exporters and importers concerned and the representatives of the principal exporting or importing country or countries concerned may ask to be informed of the principal facts and considerations resulting from the examination procedure.

5. The Commission may hear the parties concerned. It shall hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities*, made a written request for a hearing showing that they are a party primarily concerned by the result of the procedure.

6. Furthermore, the Commission shall, on request, give the parties primarily concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward. In providing this opportunity the Commission shall take account of the wishes of the parties and of the need to preserve confidentiality. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

7. When the information requested by the Commission is not supplied within a reasonable time or where the investigation is significantly impeded, findings may be made on the basis of the facts available.

8. The Commission shall take a decision as soon as possible on the opening of a Community examination procedure following any complaint or request made in accordance with Articles 3 and 4; the decision shall normally be taken within 45 days of referral; this period may be extended to 60 days in special circumstances.

9. When it has concluded its examination the Commission shall report to the Committee. The report should normally be presented within five months of the announcement of initiation of the procedure, unless the complexity of the examination is such that the Commission extends the period to seven months.

Article 7

Confidentiality

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. (a) Neither the Council, nor the Commission, nor Member States, nor the officials of any of these, shall reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis by a party to an examination procedure, without specific permission from the party submitting such information.

(b) Each request for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information or a statement of the reasons why the information is not susceptible of such summary.

3. Information will normally be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. However, if it appears that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the information in question may be disregarded.

5. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based. Such disclosure must take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

Article 8

Examination of injury

1. An examination of injury shall involve in particular the following factors:

(a) the volume of Community imports or exports concerned, notably where there has been a significant increase or decrease, either in absolute terms or relative to production or consumption on the market in question;

(b) the prices of the Community producers' competitors, in particular in order to determine whether there has been, either in the Community or on third country markets, significant undercutting of the prices of Community producers;

(c) the consequent impact on Community industry as defined in Article 2 (4) and as indicated by trends in certain economic factors such as:

— production,

— utilization of capacity,

— stocks,

— sales,
— market share,
— prices (that is, depression of prices or prevention of price increases which would normally have occurred),
— profits,
— return on capital,
— investment,
— employment.

2. Where a threat of injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard, account may also be taken of factors such as :

(a) the rate of increase of exports to the market where the competition with Community products is taking place ;

(b) export capacity in the country of origin or export, which is already in existence or will be operational in the foreseeable future, and the likelihood that the exports resulting from that capacity will be to the market referred to in point (a).

3. Injury caused by other factors which, either individually or in combination, are also adversely affecting Community industry must not be attributed to the practices under consideration.

Article 9

Termination of the procedure

1. When it is found as a result of the examination procedure that the interests of the Community do not require any action to be taken, the procedure shall be terminated in accordance with Article 12.

2. (a) When, after an examination procedure, the third country or country concerned take(s) measures which are considered satisfactory the procedure may also be terminated in accordance with the provisions of Article 11.

(b) The Commission shall supervise the application of these measures, where appropriate on the basis of information supplied at intervals, which it may request from the third countries concerned and check as necessary.

(c) Where the measures taken by the third country or countries concerned have been rescinded, suspended or improperly implemented or where the Commission has grounds for believing this to be the case or, finally, where a request for information made by the Commission as provided for by point (b) has not been granted, the Commission shall inform the Member States, and where necessary and justified by the results of the investigation and the new facts available any measures shall be taken in accordance with Article 11.

Article 10

Adoption of commercial policy measures

1. Where it is found as a result of the examination procedure that action is necessary in the interests of the Community in order to :

(a) respond to any illicit commercial practice with the aim of removing the injury resulting therefrom ; or

(b) ensure full exercise of the Community's rights with regard to the commercial practices of third countries

the appropriate measures shall be determined in accordance with the procedure set out in Article 11.

2. Where the Community's international obligations require the prior discharge of an international procedure for consultation or for the settlement of disputes, the measures referred to in paragraph 3 shall only be decided on after that procedure has been terminated, and taking account of the results of the procedure.

3. Any commercial policy measures may be taken which are compatible with existing international obligations and procedures, notably :

(a) suspension or withdrawal of any concession resulting from commercial policy negotiations ;

(b) the raising of existing customs duties or the introduction of any other charge on imports ;

(c) the introduction of quantitative restrictions or any other measures modifying import or export conditions or otherwise affecting trade with the third country concerned.

4. The corresponding decisions shall state the reasons on which they are based and shall be published in the *Official Journal of the European Communities*. Publication shall also be deemed to constitute notification to the countries and parties primarily concerned.

Article 11

Decision-making machinery

1. The decisions referred to in Articles 9 and 10 shall be adopted in accordance with the following provisions.

2. Where a response to an illicit commercial practice within the meaning of Article 1 (a) is to be made :

(a) where the Community follows formal international consultation or dispute settlement procedures, decisions relating to the initiation, conduct, or termination of such procedures shall be taken in accordance with Article 12 ;

(b) where the Community, after the conclusion of such an international procedure, has to take a decision on the measures of commercial policy to be adopted, the Council shall act, on the proposal from the Commission, in accordance with Article 113 of the Treaty, by a qualified majority, not later than 30 days after receiving the proposal.

3. Where the full exercise of the Community's rights within the meaning of Article 1 (b) is to be ensured, the Council shall act, on the proposal from the Commission, in accordance with Article 113 of the Treaty, by a qualified majority, not later than 30 days after receiving the proposal.

Article 12

Should reference be made to the procedure provided for in this Article, the matter shall be brought before the Committee by its chairman.

The Commission representative shall submit to the Committee a draft of the decision to be taken. The Committee shall discuss the matter within a period to be fixed by the chairman, depending on the urgency of the matter.

The Commission shall adopt a decision which it shall communicate to the Member States and which shall apply after a period of 10 days if during this period no Member State has referred the matter to the Council.

The Council may, at the request of a Member State and acting by a qualified majority revise the Commission's decision.

The Commission's decision shall apply after a period of 30 days if the Council has not given a ruling within this period, calculated from the day on which the matter was referred to the Council.

Article 13

This Regulation shall not apply in cases covered by other existing rules in the common commercial policy field. It shall operate by way of complement to the :

— rules establishing the common organization of agricultural markets and their implementing provisions ;

— specific rules adopted under Article 235 of the Treaty, applicable to goods processed from agricultural products.

It shall be without prejudice to other measures which may be taken pursuant to Article 113 of the Treaty.

Article 14

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, 17 September 1984.

For the Council

The President

P. BARRY