COUNCIL REGULATION (EEC) No 3705/90

of 18 December 1990

on the safeguard measures provided for in the Fourth ACP-EEC Convention

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 proposal from the Commission,

Whereas the detailed rules for implementing the safeguard clauses provided for in Part Three, Title I, Chapter 1 of the Fourth ACP-EEC Convention, signed at Lomé on 15 December 1989, hereinafter referred to as 'the Convention', should be laid down in such a way as to enable the Community and the Member States to comply with the obligations they have under the Convention;

Whereas this Regulation lays down specific provisions concerning the general rules set out in Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports [1], as last amended by Regulation (EEC) No 2727/90 [2], where the Convention makes this necessary;

Whereas account should be taken of the undertakings set out in Article 177 (2), (3), and (4) and Articles 178 and 180 and in Protocol 4 when examining whether a safeguard measure should be introduced;

Whereas the procedures concerning safeguard clauses provided for in the Treaty and in the Regulations on the common organization of the agricultural markets are also applicable;

Whereas, with a view to the completion of the single market in 1992, national safeguard measures should be abolished and replaced with a Community procedure in accordance with Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission [3];

Whereas the provisions of this Regulation replace those of Council Regulation (EEC) No 1316/87 of 11 May 1987 on the safeguard measures provided for in the Third ACP-EEC Convention [4],

HAS ADOPTED THIS REGULATION:

Article 1

1. Where a Member State requests the Commission to apply safeguard measures as provided for in Article 177 of the Convention and if the Commission decides not to apply them, the Commission shall inform the Council and the Member States accordingly within three working days of receipt of the request from the Member State.

Member States shall provide the Commission with the information needed to justify their requests to apply safeguard measures.

Any Member State may refer this decision of the Commission to the Council within 10 working days of its notification.

In such a case, the Commission shall notify the ACP States and inform them of the opening of consultations as referred to in Article 178 (1) of the Convention and implemented in accordance with Protocol 4.

The Council, acting by a qualified majority, may adopt a different decision within 20 working days after the conclusion of the consultations with the ACP States.

2. Where the Commission, at the request of a Member State or on its own initiative, decides that the safeguard measures provided for in Article 177 of the Convention should be applied:

— it shall inform the Member States forthwith or, if it is responding to a Member State's request, within three working days of the date of receipt of that request,

— it shall consult a committee made up of representatives of the Member States and chaired by a Commission representative,

— at the same time it shall inform the ACP States and notify them of the opening of consultations as referred to in Article 178 (1) of the Convention and implemented in accordance with Protocol 4 thereto,

— at the same time it shall provide the ACP States with all the information necessary for these consultations.

3. In any event, the consultations shall be deemed to be completed 21 days after the notification referred to in the fourth subparagraph of paragraph 1 and in paragraph 2.

At the end of the consultations or on expiry of the period of 21 days, and if no other arrangement proves possible, the Commission, after consulting the committee referred to in paragraph 2, may take appropriate measures to implement Article 177 of the Convention.

4. The decision referred to in paragraph 3 shall be notified forthwith to the Council, the Member States and the ACP States.

It shall be immediately applicable.

[1] OJ No L 35, 9. 2. 1982, p. 1.
[2] OJ No L 262, 26. 9. 1990, p. 11.
[3] OJ No L 197, 18. 7. 1987, p. 33.
[4] OJ No L 125, 14. 5. 1987, p. 1.

5. Any Member State may refer the Commission decision referred to in paragraph 3 to the Council within 10 working days of receiving notification of the decision.

6. If the Commission has not taken a decision within 10 working days following the end of the consultations with the ACP States or, as the case may be, the end of the period of 21 days, any Member State which has referred the matter to the Commission in accordance with paragraph 2 may refer it to the Council.

7. In the cases referred to in paragraph 5 and 6 the Council, acting by a qualified majority, may adopt a different decision within 20 working days.

Article 2

1. Where special factors arise within the meaning of Article 178 (3) of the Convention, the Commission may take, or authorize a Member State to apply immediate safeguard measures.

2. If the Commission receives a request from a Member State it shall take a decision thereon within three working days following receipt of the request.

It shall notifiy the Council and the Member States of its decision.

3. Any Member State may refer the Commission's decision to the Council in accordance with the procedure provided for in Article 1 (5).

The procedure set out in Article 1 (7) shall be applicable.

If the Commission has not taken a decision within the time limit mentioned in paragraph 2, any Member State which has referred the matter to the Commission may refer it to the Council in accordance with the procedure laid down in the preceding subparagraphs.

The provisions of this Article shall not preclude the consultations referred to in Article 178 (1) of the Convention.

Article 3

Implementation of this Regulation shall not preclude the application of the regulations establishing a common organization of the agricultural markets or related Community or national administrative provisions or the specific rules adopted under Article 235 of the Treaty for processed agricultural products.

Article 4

Community notifications to the ACP-EEC Council of Ministers pursuant to Article 177 of the Convention shall be made by the Commission.

Article 5

This Regulation shall enter into force on the 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, 18 December 1990.

For the Council

The President

G. DE MICHELIS