COUNCIL REGULATION (EC) No 317/94

of 20 December 1993

withdrawing tariff concessions in accordance with Article 23 (2) and Article 27 (3) (a) of the Free Trade Agreement between the Community and Austria (Grundig Austria GmbH)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas a Free Trade Agreement between the European Economic Community and the Republic of Austria, hereinafter referred to as 'the Agreement', was signed at Brussels on 22 July 1972 [1];

Whereas the Agreement eliminated customs duties in trade between the Community and Austria in respect of industrial products originating in the Contracting Parties within the meaning of Protocol 3 to the Agreement;

Whereas the Agreement requires the Contracting Parties to provide fair conditions of competition for trade;

Whereas Article 23 (1) (iii) of the said Agreement stipulates that any public aid affecting trade between the Community and Austria which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of the Agreement;

Whereas, in a declaration published at the same time as the Agreement, the Community stated that it would assess any practices contrary to the abovementioned Article on the basis of criteria arising from the application of Article 92 of the Treaty;

Whereas in January 1993 the Commission learned that in May 1991 and June 1992 the City Council of Vienna had granted a subsidy of a maximum of 100 million Austrian schillings to Grundig Austria GmbH towards the costs of carrying out an investment programme of 1 000 million schillings at the Vienna plant of the Grundig group;

Whereas the aided investment programme was intended to rationalize production and expand output in the Vienna plant;

Whereas Council Regulation (EEC) No 2837/72 of 19 December 1972 on safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Austria [2] provides that in such cases the Commission must assess the case, either on its own initiative or at the request of a Member State, and give its opinion on whether or not the practices in question are compatible with the Agreement;

Whereas the initial information requested by the Commission was sent by the Austrian authorities in February 1993;

Whereas after assessment of the case and further contacts with the Austrian authorities which took place in February 1993, the Grundig-Vienna case was officially referred to the Joint Committee on 25 February 1993, in accordance with Article 27 (2) and (3) (a) of the Agreement;

Whereas the Commission informed the Austrian authorities at the Joint Committee meeting that, on the basis of the information initially submitted, it considered the State aid in question to be incompatible with Article 23 of the Agreement, and that, in the light of the criteria incorporated in the method adopted by the Commission for the application of Article 92 (3) (a) and (c) of the EEC Treaty to regional aid, the investment programme by Grundig Austria GmbH at Vienna would not be eligible for regional aid;

Whereas at the Joint Committee meeting, both parties agreed to hold a meeting of experts with a view to clarifying certain elements of the case and to seeking a mutually acceptable solution;

Whereas further information requested by the Commission was sent by the Austrian authorities in March 1993;

Whereas on 23 April 1993 the Commission transmitted to the Austrian authorities an official note dated 16 April 1993 reiterating the view that the State aid in question was incompatible with Article 23 of the Agreement;

Whereas on 13 May 1993 a meeting of experts took place but no mutually acceptable solution was arrived at;

Whereas the further information subsequently sent by the Austrian authorities in May 1993 does not make it possible for the Commission to change its view that the aid in question is incompatible with Article 23 of the Agreement;

[1] OJ No L 300, 31. 12. 1972, p. 2.

[2] OJ No L 300, 31. 12. 1972, p. 94. Regulation as last amended by Regulation (EEC) No 638/90 (OJ No L 74, 20. 3. 1990, p. 1).

Whereas the aid in question covered part of the costs that Grundig Austria GmbH should have borne by itself in order to rationalize production and expand output at its factory at Vienna and, consequently, reinforced its competitive position as regards other competitors;

Whereas 85 % of the TV sets produced by Grundig at its factory at Vienna are exported to the Community, benefitting from tariff preferences under the Agreement;

Whereas in the highly competitive market for TV sets, in which Community producers are active, an unjustified State aid to Grundig Austria GmbH distorts competition and trade between the Community and Austria and favours Grundig's exports from its Vienna plant;

Whereas State aids also have effects on decisions concerning the localization of industrial activities between alternative possible sites and the aid in question is the latest in an on-going series of aids granted, at least since 1983, by the Austrian authorities to Grundig Austria GmbH in order to rationalize production and attract manufacturing activities from other sites;

Whereas in view of the prospect of declining demand and increased competition in the market for TV sets, aid for rationalization and expansion of output, in circumstances where no other Community manufacturer can benefit from such aid in similar circumstances, causes serious difficulties;

Whereas Article 27 (3) of the Agreement stipulates that if a Contracting Party fails to put an end to practices objected to within the period fixed by the Joint Committee or, in the absence of agreement in the Joint Committee, within three months of the matter being referred to it, the other Contracting Party may adopt any safeguard measures it considers necessary to deal with serious difficulties resulting from the practices in question; in particular it may withdraw tariff concessions;

Whereas the safeguard measure which appears the best adapted to remedy the distortion of competition and the effect on trade which arise out of the existence of the aid is the introduction of duties at a level equal to the level of customs duties which would have prevailed if the Agreement had not entered into force and for as long as the aid has such distorting effects;

Whereas the foreseeable period during which the aid can have those effects is the average fiscal depreciation period of the aided investments;

Whereas therefore a duty of 14 % should be applied on the abovementioned period or until such earlier time as the Council concludes that the aids in question are no longer having a distortive effect on competition and trade,

HAS ADOPTED THIS REGULATION:

Article 1

A 14 % duty is hereby reintroduced for TV sets produced by Grundig Austria GmbH (Taric additional code 8998; others: Taric additional code 8999) falling within ex CN code 8528 10 and ex CN code 8528 20 and originating in Austria within the meaning of Protocol 3 to the Free Trade Agreement between the Community and Austria.

This 14 % duty shall apply for a period equivalent to the average fiscal depreciation period or until such earlier time as the Council, on the basis of a Commission proposal, concludes that the aids in question are no longer having a distortive effect on competition and trade.

Article 2

This Regulation shall enter into force on the day of 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, 20 December 1993.

For the Council

The President

W. CLAES