COUNCIL REGULATION (EC) No 521/94

of 7 March 1994

on the introduction of time limits for investigation procedures carried out against dumped or subsidized imports from countries not members of the European Community and amending Regulation (EEC) No 2423/88

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 the common commercial policy must be based on uniform principles, in particular with regard to commercial defence;

Whereas instruments of commercial defence, in particular in respect of unfair trade practices, are an indispensable complement to an open market and fair trading system, thus contributing to the harmonious development of world trade;

Whereas, to this end Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1] was established;

Whereas the completion of the internal market in 1992 makes it appropriate to improve the functioning of this instrument of commercial defence, in particular in respect of the length of the investigations carried out under this instrument;

Whereas it is therefore appropriate and necessary to introduce time limits for investigation procedures carried out under Regulation (EEC) No 2423/88;

Whereas for complaints lodged against dumped or subsidized imports it is necessary to set time limits for the initiation of investigations and for the provisional and final determinations; whereas it is also appropriate to ensure that final decisions, either positive or negative, are taken quickly to ensure compliance with international obligations;

Whereas in order that the time limits can be respected, it is essential to provide for sampling where there are a large number of parties involved in an investigation, to clarify the periods within which views and information have to be submitted to the Commission in order for them to be taken into account in the investigation, to define more precisely the parties which may inspect information available to the Commission and may request to be informed of the essential facts on the basis of which definitive measures are to be proposed and to clarify the consequences of partial or non-cooperation by those parties;

Whereas it is also essential to ensure that consultations with Member States within the Advisory Committee are held in sufficient time to allow the time limits to be respected;

Whereas it is also appropriate to simplify procedures by providing that provisional duties may be imposed for a full six month period rather than for an initial four month period which may then be extended for a further two months;

Whereas review investigations should also be completed expeditiously;

Whereas, in addition, it is imperative to link the implementation of this Regulation to the establishment of the necessary administrative structure within the Commission's services; whereas, the Council, therefore, should specify in a decision to be adopted by a qualified majority no later than 1 April 1995, the complaints, proceedings and investigations to which this Regulation will apply,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2423/88 is hereby amended as follows:

1. Article 2 (13), shall be retitled 'G Averaging Techniques' and the third indent shall be deleted.

2. The following sentence shall be added to Article 5 (3):

   'The complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.'

3. The following shall be added to Article 5 (5) *in fine:*

   '... within one month of the date on which the complaint is lodged with the Commission.'

[1] OJ No L 209, 2. 8. 1988, p. 1. Regulation as amended by Regulation (EC) No 522/94 (See p. 10 of this Official Journal).

4. The following text shall be added to Article 6 (1) *in fine:*

'... and in any event within a time frame which allows the time limits set by this Regulation to be respected.'

5. The following text shall be added to Article 6 (3) *in fine:*

'..., which the Chairman shall arrange provided that such oral consultation can be held within a time frame which allows the time limits set by this Regulation to be respected.'

6. The word 'immediately' in the first sentence of Article 7 (1) shall be deleted and Article 7 (1) (a) shall be replaced by the following:

'(a) initiate a proceeding within one month of the lodging of the complaint and publish a notice in the *Official Journal of the European Communities;* such notice 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 periods within which interested parties may make their views known in writing and submit information if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 5 of this Article.'

7. The following sub-paragraph shall be added to Article 7 (2):

'(c) Where there are a large number of parties involved, the investigation may be limited to a sample of the parties, products or transactions which can be investigated in the time available.'

8. Article 7 (4) (a) shall read as follows:

'(a) The complainants, importers, exporters, users and consumer organizations, which have made themselves known in accordance with Article 7 (1) (a) of this Regulation, as well as the representatives of the exporting country, may inspect all information made available to the Commission by any party to an investigation as distinct from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission indicating the information required.'

9. Article 7 (7) (b) shall be replaced by the following:

'(b) In cases in which any interested party or third country refuses access to, or otherwise does not provide, necessary information within the time limits set by this Regulation or by the Commission under this Regulation, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available. Where the Commission finds that any interested party or third country has supplied it with false or misleading information, it shall disregard the information and may make use of facts available.'

10. Article 7 (9) (a) shall be replaced by the following:

'(a) An investigation shall normally be concluded within one year. In any event, an investigation shall be concluded within 13 months of initiation in the case of anti-subsidy investigations and within 15 months of initiation in the case of anti-dumping investigations, either by its termination pursuant to Article 9 or by definitive action pursuant to Article 12.'

11. The following shall be added to the first sentence of Article 11 (1):

'... no later than nine months from the initiation of the investigation'.

12. Article 11 (5) shall be replaced by the following:

'5. Provisional duties shall have a maximum period of validity of four months. However, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission, provisional anti-dumping duties may have a period of validity of six months.'

13. The following sentence shall be added to Article 14 (2):

'Review investigations shall normally be completed no later than 15 months from the date of the initiation of the review.'

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

It shall only apply to complaints lodged, proceedings initiated and review investigations initiated after dates which the Council shall specify in a Decision to be adopted by a qualified majority no later than 1 April 1995 on the basis of a Commission proposal to be submitted to the Council once the necessary budgetary resources have been made available.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 March 1994.

For the Council

The President

Th. PANGALOS