COUNCIL REGULATION (EC) No 410/97

of 24 February 1997

on certain procedures for applying the Interim Agreement on Trade and Trade-Related Measures between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Slovenia, of the other part

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 Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Slovenia, of the other part, was signed in Luxembourg on 10 June 1996;

Whereas, pending the entry into force of the Europe Agreement, its provisions on trade and trade-related matters have been given effect since 1 January 1997 by an Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Slovenia, of the other part, hereinafter referred to as 'the Agreement', signed in Brussels on 11 November 1996 and which is being applied provisionally from 1 January 1997 ([1]);

Whereas it is necessary to lay down the procedures for applying certain provisions of the Agreement;

Whereas, with regard to trade protection measures, it is appropriate, where the provisions of the Agreement render it necessary, to lay down specific provisions concerning the general rules provided for in particular in Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports ([2]) and in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([3]);

Whereas account should be taken of the undertakings set out in the Agreement before deciding whether a safeguard measure should be introduced;

Whereas the procedures concerning safeguard clauses provided for in the Treaty establishing the European Community are also applicable;

Whereas specific provisions have been adopted for safeguard measures concerning the textile products covered by Protocol 1 of the Agreement;

Whereas certain provisions should be introduced for the application of tariff quotas and tariff ceilings,

HAS ADOPTED THIS REGULATION:

TITLE I

Tariff quotas and tariff ceilings

Article 1

Provisions for the application of Article 15 (2) of the Agreement concerning agricultural products falling within Annex II of the Treaty and subject to a common market organization and concerning products falling within CN codes 0711 90 50 and 2003 10 10, shall be adopted in accordance with the procedure provided for in Article 23 of Regulation (EEC) No 1766/92 ([4]) or in the corresponding provisions of other regulations establishing a common organization of the agricultural markets.

Article 2

1. Provisions for the application of tariff quotas and tariff ceilings provided for in Annexes II, VI (other than those covered by Article 1) and VIIIa of the Agreement and in Annex I to Protocol 1 of the Agreement, including amendments and technical adaptations made necessary by amendments to the combined nomenclature and Taric codes, or arising from the conclusion by the Council of agreements, protocols or exchanges of letters between the Community and Slovenia, shall be adopted by the Commission, assisted by the Customs Code Committee set up by Article 247 of Regulation (EEC) No 2913/92 ([5]), according to the procedure set out in paragraph 2 of this Article.

([1]) OJ No L 344, 31. 12. 1996, p. 1.
([2]) OJ No L 349, 31. 12. 1994, p. 53.
([3]) OJ No L 56, 6. 3. 1996, p. 1.
([4]) OJ No L 181, 1. 7. 1992, p. 21. Regulation as last amended by Regulation (EC) No 923/96 (OJ No L 126, 24. 5. 1996, p. 37).
([5]) OJ No L 302, 19. 10. 1992, p. 1.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chair may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures, which apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

— the Commission may defer application of the measures which it has decided for a period of not more than three months from the date of such communication,

— the Council, acting by qualified majority, may take a different decision within the period referred to in the first indent.

3. The Committee may examine any question concerning the application of tariff quotas and tariff ceilings, which is raised by its chair either at the latter's initiative or at the request of a Member State.

4. As soon as the tariff ceilings are reached, the Commission may adopt a regulation re-establishing, until the end of the calendar year, the customs duties applicable to third countries.

TITLE II

Protective measures

Article 3

The Council may, in accordance with the procedure provided for in Article 113 of the Treaty, decide to refer to the Cooperation Council established by the Agreement with regard to the measures provided for in Articles 23 and 45 (2) of the Agreement. Where necessary, the Council shall adopt these measures in accordance with the same procedure.

The Commission may, on its own initiative or at the request of a Member State, present the necessary proposals to this end.

Article 4

1. In the case of a practice that may justify application by the Community of the measures provided for in Article 33 of the Agreement, the Commission, after examining the case, on its own initiative or at the request of a Member State, shall decide whether such practice is compatible with the Agreement. Where necessary, it shall propose the adoption of safeguard measures to the Council, which shall act in accordance with the procedure laid down in Article 113 of the Treaty, except in the cases of aid to which Regulation (EC) No 3284/94 [1] applies, when measures shall be taken according to the procedures laid down in that Regulation. Measures shall be taken only under conditions set out in Article 33 (6) of the Agreement.

2. In the case of a practice that may cause measures to be applied to the Community by Slovenia on the basis of Article 33 of the Agreement, the Commission, after examining the case, shall decide whether the practice is compatible with the principles set out in the Agreement. Where necessary, it shall take appropriate decisions on the basis of criteria which result from the application of Articles 85, 86 and 92 of the Treaty.

Article 5

In the case of a practice which is liable to warrant the application, by the Community, of the measures provided for in Article 24 of the Agreement, the introduction of anti-dumping measures shall be decided upon in accordance with the provisions laid down in Regulation (EC) No 384/96 and the procedure provided for in Article 28 (2) and (3) (b) or (d) of the Agreement.

Article 6

1. Where a Member State requests the Commission to apply safeguard measures as provided for in Articles 25 and 26 of the Agreement, it shall provide the Commission, in support of its request, with the information needed to justify it. If the Commission decides not to apply safeguard measures, it shall inform the Council and the Member States accordingly within five working days of receipt of the request from the Member State.

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

If the Council, acting by qualified majority, indicates its intention to adopt a different decision, the Commission shall inform Slovenia thereof forthwith and shall notify it of the opening of the consultations within the Cooperation Council as provided for in Article 28 (2) and (3) of the Agreement.

The Council, acting by a qualified majority, may take a different decision within twenty working days of the conclusion of the consultations with Slovenia within the Cooperation Council.

2. The Commission shall be assisted by a committee (hereinafter referred to as 'the Committee'), composed of representatives of the Member States and chaired by a representative of the Commission.

The Committee shall meet when convened by its chairman. The latter shall communicate any appropriate information to the Member States at the earliest opportunity.

[1] OJ No L 349, 31. 12. 1994, p. 22.

3. Where the Commission, at the request of a Member State or on its own initiative, decides that the safeguard measures provided for in Articles 25 and 26 of the Agreement should be applied:

— it shall inform the Member States forthwith if acting on its own initiative or, if it is responding to a Member State's request, within five working days of the date of receipt of that request,

— it shall consult the Committee,

— at the same time it shall inform Slovenia and notify the Cooperation Council of the opening of consultations as referred to in Article 28 (2) and (3) of the Agreement,

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

4. In any event, the consultations within the Cooperation Council shall be deemed to be completed 30 days after the notification referred to in paragraphs 1 and 3.

At the end of the consultations or on expiry of the period of 30 days, and if no other arrangement proves possible, the Commission after consulting the Committee, may take appropriate measures to implement Articles 25 and 26 of the Agreement.

5. The decision referred to in paragraph 4 shall be notified forthwith to the Council, the Member States and Slovenia; it shall also be notified to the Cooperation Council.

The decision shall be applicable immediately.

6. Any Member State may refer the Commission decision referred to in paragraph 4 to the Council within ten working days of receiving notification of the decision.

7. If the Commission has not taken a decision within the meaning of the second subparagraph of paragraph 4 within 10 working days of the end of the consultations with the Cooperation Council or, as the case may be, the end of the periods of 30 days, any Member State which has referred the matter to the Commission in accordance with paragraph 3 may refer it to the Council.

8. In the cases referred to in paragraphs 6 and 7 the Council, acting by a qualified majority, may take a different decision within two months.

Article 7

1. Where exceptional circumstances arise within the meaning of Article 28 (3) (d) of the Agreement, the Commission may take immediate safeguard measures in the cases referred to in Articles 25 and 26 of the Agreement.

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

2. The Commission shall notify 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 6 (6).

The procedure set out in Article 6 (7) and (8) shall be applicable.

If the Commission has not taken a decision within the time limit mentioned in the second subparagraph of paragraph 1, any Member State which has referred the matter to the Commission may refer it to the Council in accordance with the procedures laid down in the first and second subparagraphs of this paragraph.

Article 8

The procedures laid down in Articles 6 and 7 shall not apply to products covered by Protocol 1 of the Agreement.

Article 9

By way of derogation from Articles 6 and 7, if the circumstances demand that measures are taken concerning agricultural products on the basis of Articles 16 and 25 of the Agreement or on the basis of provisions in the Annexes covering these products, such measures shall be taken according to procedures provided for by the rules establishing a common organization of the agricultural markets, or in specific provisions adopted pursuant to Article 235 of the Treaty and applicable to products resulting from the processing of agricultural products, provided that the conditions established pursuant to Article 16 or Article 28 (2) and (3) of the Agreement are met.

Article 10

Notification to the Cooperation Council as required by the Agreement shall be the responsibility of the Commission, acting on behalf of the Community.

Article 11

This Regulation does not preclude the application of safeguard measures provided for in the Treaty establishing the European Community, in particular in Articles 109h and 109i, according to the procedures laid down therein.

Article 12

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

It shall apply from 1 January 1997.

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

Done at Brussels, 24 February 1997.

For the Council

The President

H. VAN MIERLO